



Issued Date: FEBRUARY 29, 2024

From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0385

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional
 - a. **Finding:** Not Sustained - Unfounded
2. **Allegation #2:** 5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing
 - a. **Finding:** Not Sustained - Unfounded

Named Employee #2

1. **Allegation #1:** 5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional
 - a. **Finding:** Not Sustained - Inconclusive
2. **Allegation #2:** 5.140 - Bias-Free Policing, 5.140-POL-2 Officers Will Not Engage in Bias-Based Policing
 - a. **Finding:** Not Sustained - Unfounded

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 an unnamed officer was directing traffic following a football game and punched the passenger side of his car window forcefully when he was making a left turn. The officer allegedly made an aggressive gesture and yelled at him. Also, the Complainant believed the officer may have acted in this manner due to his race.

Administrative Note:

On January 23, 2024, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

Summary of the Investigation:

On September 2, 2023, the Complainant made an OPA complainant alleging that he was driving eastbound on NE 44th Street and making a left turn onto Montlake Blvd. NE on August 2, 2023, when an unknown officer directing traffic, forcefully punched his passenger side window as he was making a left turn. Also, the Complaint stated, as he was making the left turn the officer "made an aggressive gesture" at him "while barking vocally." The Complainant stated he felt the officer's behavior was "aggressive and intimidating" and "unprofessional". Additionally, the Complainant alleged the officer may have been "exhibiting unconscious bias" towards him because he was "a minority." The Complainant felt the officer should not be directing traffic if he "cannot maintain emotional stability ..." Also, he explained the officer should no longer serve, volunteer, or be affiliated with any law enforcement department in any capacity.

a. Complainant Interview

The Complainant alleged the time of this incident was approximately 1230 hours on September 2, 2023, at a traffic light at NE 44th Street and Montlake Blvd. NE. Furthermore, that SPD was conducting traffic control at this time due to a football game. The Complainant was instructed by the officer to make his left-hand turn from NE 44th Street / Montlake Blvd NE and did so slowly at approximately 1 MPH. The Complainant stopped briefly to allow cars to pass. It was as the Complainant began to take a left turn that the Officer punched his passenger side rear window forcefully and made an aggressive gesture to him. The Complainant explained the officer's back was to the intersection and light, so he was unaware that traffic had a green light to move through the intersection. The Complaint indicated there was no damage to his window; however, the officer used a closed fist to strike his window. The Complaint described the officer's aggressive gesture as a "hostile facial expression indicative of extreme anger, along with an intimidating glare / stare down from the officer." The Complainant did not recall what the officer said but it was along the lines of "hey!". Also, he described the officer as "a white male, approximately 5'10", with a thin build and an estimated weight of 150-180lbs, older (estimated over 50), graying/white hair. The Complainant had no one else in his vehicle. Also, he believed there were other pedestrians and motorists who witnessed it however they were not known to him.

b. SPD Traffic Review

SPD investigated to determine which officers were assigned to this location on August 2, 2023, at approximately 12:30 hours. An SPD Traffic Supervisor, Witness Supervisor 1 (WS#1) provided a list of three SPD employees who were assigned to the intersection at Montlake Blvd NE & NE 44 Street & Walla Walla Road on that date and time. The three officers were: (1) Witness Officer 1 (WO#1), (2) Named Employee 2 (NE#2) and (3) Witness Officer 2 (WO#2). In review of the Complainant's description, WO#1 and WO#2 did not fit the description.



Intersection of occurrence – Google Maps

Parking Enforcement Operator (PEO) Supervisor (PEOS #1) stated the description matched NE#2. Photos were provided for all three officers. The Complaint was showed the photo of NE#2 and indicated, “there was a 75-85% chance that the photo of NE#2 matched the officer that was involved in the incident with him”. The Complainant indicated that the photo must be an old one, as the officer was older than the male in the picture. Additionally, the Complainant explained he was looking at the officer through tinted windows. A photo of NE#1 was shown to the Complainant to ascertain if he was a named employee. The Complaint stated NE#2 seemed closer in age to what he recalled. The Complainant stated it was “difficult to confirm with 100% certainty. The Complainant gave a high percent of certainty for both parking enforcement officers (PEO’s) NE#1 and NE#2, as both were working the intersection of Montlake BLVD NE / Walla Walla Street.

c. NE#1 Interview

NE# 1 was working the NE corner of the intersection near Montlake BLVD NE / Walla Walla Street, but stated, “nothing stood out for the day.” NE#1 did not recall an incident with a vehicle attempting to make a left turn onto Montlake BLVD. from NE 44th Street. Also, NE#1stated on September 2, 2023, he only had his post-game assignment written down, 25 Av NE/NE 75th St. Furthermore, that he may have been “a rover”, which means that he checks on the area’s posted no parking, to ensure clear egress routes after the game. OPA reviewed the staffing sheet for the football game and it shows NE#` as “to be determined” for his pre-game post.

Also, NE#1 stated she did not “... recall any officer or PEO having any interaction with an orange Ford Edge SUV.” The description of the Complainant’s vehicle. Furthermore, NE#1 stated that, “he normally blows his whistle to get the attention of a driver.” NE#1 indicated, “he believes he is fair, alert and not biased in any way.”

d. NE#2 Interview

NE#2 was interviewed. During the interview, named employee #1 (NE#1) had similar features that matched the description of the Complainant. NE#2 described having an interaction with a vehicle that had made an illegal left turn from southbound Montlake BLVD NE onto Walla Walla Street. However, he knocked on the window of the vehicle to ask the driver if he was aware that he made an illegal left turn. NE#2 stated, "he did not say anything derogatory and did not recall what the driver's race was". NE#2 stated, "he was only concerned with the safety issue of a driver making the illegal turn and crossing two lanes of traffic. Also, he stated his wife is another race and he has a child that is biracial. Furthermore, NE#2 stated, "he knocked on the window the same way you would knock on a door." NE#2 indicated he did not recall making any aggressive gesture towards the driver. Also, NE#2 stated, his interaction was with a vehicle traveling in a different direction than reported by the Complainant. NE#2 stated, "the driver [complainant] was traveling away from U-Village, which is where the [Complainant] stated he was going."

Analysis and Conclusions:

Named Employee #1 - Allegation #1

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

Regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers. Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force. 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.

The Complainant alleged that NE#1 was unprofessional.

Here, during the investigation that NE#1 was working in the location and matched the physical description provided by the Complainant. However, NE#1 was not on the traffic plan provided by the traffic unit. Furthermore, NE#1 did not recall an incident with a vehicle attempting to make a left turn onto Montlake BLVD. from NE 44th Street and may have been a rover on that day. NE#1 stated, "nothing stood out for the day" and did not recall ever encountering the Complainant or his vehicle. Also, that he prefers a whistle to help direct cars. Therefore, based on the evidence provided by a preponderance of the evidence, there is not sufficient evidence to corroborate that NE#1 was at the intersection the Complainant was at on that day and time.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #2

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

The Complainant alleged that NE#1 may have acted with bias because he was a minority.

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 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.

Here, there was not sufficient evidence to place NE#1 at the location and time of the alleged incident with the Complainant. Also, based on the evidence provided, even if NE#1 matched the description given by the Complainant, there is insufficient evidence to prove that NE#1’s actions were motivated by bias based on race. Therefore, OPA finds there is insufficient evidence that NE#1 was there and treated the Complainant differently because of his race.

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

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #1

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

The Complainant alleged that NE#2 was unprofessional.

Regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers. Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force. 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.

Here, NE#2 recalled being at or near the location of the alleged incident and was identified as looking 75-85% like the description the Complainant gave. Also, NE#2 stated he was at the intersection given by the Complainant but was facing another direction than the Complainant. Furthermore, NE#2 stated the vehicle he encountered on that day and approximate time, was making an illegal turn and he did not yell at the driver and knocked on the window to ask the driver if he was aware that he made an illegal left turn. NE#2 stated he did not say anything derogatory and did not recall the race of the driver at all. Here, based on the evidence provided OPA finds that there is insufficient evidence to prove more likely than not that NE#2 acted unprofessionally. OPA finds the evidence inconclusive in review of the totality of the circumstances.

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

Recommended Finding: **Not Sustained - Inconclusive**

Named Employee #2 - Allegation #2

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

The Complainant alleged that NE#2 may have acted with bias because he was a minority.

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 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.

Here, there was evidence placing NE#2 at or near the location of the alleged incident and was identified as 75-85% like the description of the Complainant; however, there was not conclusive evidence NE#2 was there and committed the acts stated by the Complainant. Also, based on the evidence provided, even if NE#2 matched the description given by the Complainant more, there is insufficient evidence to prove that NE#2’s actions were motivated by bias based on race. Therefore, OPA finds based on the evidence provided, there was insufficient evidence that NE#2 was there and did the acts that were alleged and treated the Complainant differently because of his race

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

Recommended Finding: **Not Sustained - Unfounded**