

Issued Date: FEBRUARY 27, 2024

From: Director Gino Betts, Office of Police Accountability



Case Number: 2023OPA-0393

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 - Inconclusive

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) was parked in a business parking lot. The Complainant alleged that NE#1 was unprofessional when NE#1 refused to leave and said, "Get me a cup of coffee."

Administrative Note:

On January 30, 2024, the Office of Inspector General (OIG) certified OPA's investigation as thorough and objective but untimely. Specifically, OIG determined the notice of receipt of complaint was sent to the named employee nine business days beyond the required deadline. OPA acknowledges that the notice was untimely but respectfully disagrees that the investigation was untimely. The delay did not impact the thoroughness or objectivity of OPA's investigation, the classification notice was timely issued, and OPA completed its investigation within 180 days as required by ordinance and the governing collective bargaining agreement. Accordingly, OPA believes this investigation was timely.

Summary of the Investigation:

On September 7, 2023, the Complainant filed an online OPA complaint. He wrote that NE#1 was on a motorcycle parked in his business parking lot using a phone. He wrote that he asked whether NE#1 needed help, and NE#1 replied, "A cup of coffee." He wrote that he asked NE#1 again, and NE#1 replied, "No." He wrote that he asked NE#1 to leave, but NE#1 refused and asked why. He wrote that he did not need to give a reason since NE#1 was trespassing. He wrote that he walked away while NE#1 shouted, "Get me a cup of coffee."

OPA investigated the complaint, searched computer-aided dispatch (CAD) call logs and body-worn video (BWV) without locating the incident. OPA also interviewed NE#1. OPA was unable to arrange an interview with the Complainant despite emailing and calling the Complainant multiple times on different dates.

The OPA complaint indicated that the incident occurred on September 7, 2023, at 9:25 AM. On that date and time, CAD logs did not indicate NE#1 was on a call for service. OPA found no BWV pertinent to this investigation.

On December 8, 2023, OPA interviewed NE#1. NE#1 confirmed he was on a motorcycle working for the Traffic Unit on September 7, 2023. NE#1 also confirmed parking in the lot to check his phone. He said it was a public parking lot and no cars were present. He said the Complainant parked nearby, approached, and asked, "Can I get you anything?" NE#1 thought the Complainant was being friendly, so NE#1 asked for coffee. NE#1 said the Complainant asked whether something was happening, but NE#1 responded no. NE#1 said the Complainant asked him to leave, startling NE#1, so NE#1 asked why. NE#1 said the Complainant replied, "I don't have to tell you," and walked away. NE#1 said he tried to explain his presence, but the Complainant did not want to talk. NE#1 said, as the Complainant walked away, NE#1 said, "Well, I guess that means I don't get coffee." NE#1 denied yelling at the Complainant. NE#1 said the Complainant did not identify himself as a business owner. NE#1 believed his interaction with the Complainant was professional but was "thrown for a loop" when the conversation went "sideways."

Analysis and Conclusions:

Named Employee #1 – Allegation #1

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

The Complainant alleged that NE#1 was unprofessional by refusing to leave and requesting coffee.

SPD employees must "strive to be professional." SPD Policy 5.001-POL-10. Further, "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers," whether on or off duty. *Id.* Additionally, employees must "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." *Id.* 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.*

The evidence suggests that the Complainant and NE#1 interpreted their inaction differently. While NE#1 thought the initial encounter was cordial, the Complainant appeared to take issue with NE#1's presence in a private lot and request for coffee. In the complaint, the Complainant described the area where this occurred as the "premises at our business" and alleged NE#1 was "in our parking lot." The Complainant also stated NE#1 was "trespassing." OPA was unable to

determine the ownership of the parking lot. NE#1 stated it was a public lot. NE#1 thought the Complainant was being friendly, so he requested coffee when the Complainant asked whether NE#1 needed anything. The Complainant made his displeasure with NE#1's presence known by asking NE#1 to leave, but NE#1's alleged response, while arguably snarky, did not constitute unprofessionalism. The Complainant said NE#1 shouted, "Get me a cup of coffee," while NE#1 claimed to say, "Well, I guess that means I don't get coffee." Ultimately, without further evidence, OPA cannot determine which version occurred.

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

Recommended Finding: **Not Sustained - Inconclusive**