



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 18, 2018

CASE NUMBER: 2017OPA-1023

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity	Not Sustained (Training Referral)
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	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, a Department Supervisor, referred a complaint from the subject to OPA. The subject alleged that he had been subjected to biased policing by Named Employee #1 and other Unknown Employees of the Department. The subject further contended that Named Employee #1 was rude to him. Lastly, during its intake investigation, OPA determined that Named Employee #1 may have failed to activate his In-Car Video system in potential violation of policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The subject alleged that he was spoken to rudely by Named Employee #1 (NE#1) and other Unknown Employees, as well as that he was not listened to and treated differently because of his race.

The subject called 911 to report that his vehicle had been broken into and that a bag containing money had been stolen from therein. At the time of the theft, the subject was inside of a club and he believed that one of the female dancers that he had been interacting with at the club could have been involved with the theft. The subject also asserted that the dancer’s “pimp,” who the subject had observed driving slowly through the area, could have been



the perpetrator. The subject stated that he initially tried to report this theft to several Unknown Officers, but that he was ignored. NE#1 ultimately responded to the location of the theft and met with NE#1 to take a report from him.

As discussed below, there was no In-Car Video (ICV) of the interaction between NE#1 and the subject as NE#1 admittedly failed to record. Moreover, OPA made multiple unsuccessful attempts to interview the subject. OPA called him six times but he did not answer any of those calls and OPA was unable to leave voicemails. OPA also wrote the subject a letter asking for him to contact OPA; however, he did not respond. Accordingly, OPA's belief concerning what occurred in this case was pieced together from the subject's statement to NE#1's sergeant, the OPA complaint filed by the sergeant, and NE#1's OPA interview.

While NE#1 failed to properly activate his ICV as required by policy and while NE#1 may have lost his temper during the latter part of his interaction with the subject, I find no evidence that he engaged in biased policing. Moreover, that NE#1 interrupted the subject during their discussion was based on his inability to fully comprehend the subject's account, not because of the subject's race. Lastly, NE#1 took a number of steps to investigate this case, including: going to the scene; going to the subject's garage to photograph his vehicle; calling his sergeant when the subject made a complaint of bias; and writing a detailed report. Accordingly, I find no evidence that NE#1 treated the subject differently because of his status as an African-American man. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

16.090 - In-Car and Body-Worn Video 5. Employees Recording Police Activity b. When Employees Record Activity

SPD Policy 16.090-POL-5(b) requires that Department employees record delineated law enforcement activity on their ICV systems. Included in this activity is the response to dispatched calls and the interviewing of victims. Here, it is undisputed that NE#1 was required to record his interaction with the subject. It is further undisputed that NE#1, by mistake, failed to do so.

At his OPA interview, NE#1 provided a long explanation as to why he failed to record. Simply stated, NE#1 initially activated his system but when he arrived to take a report from the subject, the subject was not there and NE#1 instead responded to a call concerning an in-progress burglary. On his way, he turned off his ICV with the intention of turning it back on when he neared the location. He did so to ensure that each incident had its own separate ICV recording. While driving, he spoke with SPD Dispatch and was informed that the subject was coming back to the scene to meet him. NE#1 then returned to the location of the crime; however, when he did so, he forgot to re-initiate his ICV. Accordingly, his entire interaction with the subject was not recorded.

By failing to activate his ICV when he responded back to the location to take a report from the subject, NE#1 violated SPD policy. That being said, it was clear from NE#1's OPA interview that this was a mistake. That this was a mistake was further corroborated by the fact that NE#1 reported telling both OPA and his sergeant that he informed the subject multiple times that he was being audio and video recorded. I further note that NE#1 notified his supervisor of his failure to activate his ICV as soon as he realized it and documented his error in the General Offense Report he completed for this incident.



Had NE#1 not taken these steps and had he not been as forthcoming as he was during his OPA interview, I would have recommended that this allegation be Sustained. However, based on NE#1's recognition that he made a mistake and his acceptance of responsibility, as well as his timely reporting and documentation of the violation, I recommend that this allegation be Not Sustained – Training Referral.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

As NE#1 errantly did not record this incident, the only record of his interaction with the subject is captured in the OPA complaint submitted by NE#1's sergeant, the screening of the subject's bias complaint by the sergeant that was recorded on ICV, and NE#1's OPA interview. The OPA complaint characterized the subject as feeling that NE#1 did not listen to him and treated him differently because he was African-American. During his conversation with the sergeant, the subject stated that NE#1 had an "attitude" at the inception of the call and continually interrupted him during his recounting of the incident to ask him questions. The subject told the sergeant that NE#1 told him that if he did not "be quiet" NE#1 would not take a report. The subject said that NE#1 treated him as if he was a drug user. The subject told the sergeant that when he made the bias complaint, NE#1 said: "Don't you go anywhere, my sergeant is on the way." The sergeant stated that the subject would have been free to leave at any time during his interaction with NE#1 and said that she would speak with NE#1 concerning this complaint. She also initiated an OPA complaint on his behalf.

During his OPA interview, NE#1 provided significant detail concerning his interaction with the subject. NE#1 described that the subject began to relay what had occurred. NE#1 characterized his account as convoluted and reported asking follow-up questions in an attempt to clarify what had occurred. NE#1 recounted that after the third time he interjected, the subject got agitated and even told him to shut up. NE#1 then went with the subject to his garage to photograph his vehicle. At that point, NE#1 stated that the subject was angry at him. NE#1 told OPA that he said to the subject: "if you're going to verbally abuse me like this, you know, I'm just gonna walk away. If you want the report then let me get the story straight and I'll do this report for you." NE#1 recalled that the subject then made the bias complaint against him. NE#1 reported that he "yelled" at the subject: "hey, now I have to have my Sergeant come investigate this. If you wanna freakin' make up a biased complaint I have to have my Sergeant come here. So if you wanna wait here for my Sergeant and complain to her that's fine."

SPD Policy 5.001-POL-9 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-9.)

Given that there is no recording of this incident and given the disputes of fact between the parties, I cannot definitively determine the exact nature of NE#1's interaction with the subject. Based on the subject's account, NE#1 had an attitude out of the gate, was rude, repeatedly interrupted him, and would not listen to him. NE#1, for his part, described the subject as being agitated and explained that the reason he interrupted the subject was to understand what had happened and to more thoroughly investigate and accurately report this incident. NE#1 admitted telling the subject that if he did not stop verbally abusing him NE#1 would not write a report, as well as



yelling at the subject after the bias complaint was made. It was clear from my reading of NE#1's OPA interview that he was upset by that allegation, which he believed to have no merit.

I find that the subject was clearly angry based on his recorded interview with the sergeant. This anger may have been understandable based on the fact that he had just been the victim of a crime, but I find it likely that he took this anger out on NE#1, who had gone to the scene to help him. NE#1 clearly lost his patience at the end of his interaction with the subject, and he was upset at being verbally abused and then being accused of being racist. I can also understand his frustration; however, he should not have yelled at the subject. NE#1, as a police officer, is held to a higher standard. Even if he was accused of biased policing, he should have removed himself from the situation and called his supervisor, not engaged in a heated back and forth with the subject.

That being said, I do not feel that NE#1's behavior violated policy. Instead, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1 should receive counseling from his chain of command concerning his interaction with the subject. He should be reminded that, even when he is accused of engaging in bias, he should attempt to remain calm, remove himself from the situation, and notify a supervisor. While it is understandable that NE#1 was frustrated by the allegation and what he perceived to be verbal abuse from the subject, the Department's expectation is that he will control his temper and maintain his professionalism. This counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #1

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

Along with the biased policing that he contended that NE#1 engaged in, the subject also alleged that several Unknown Officers had failed to help him earlier that evening and that this failure to assist him was based on his race. This conduct, if true, could constitute unprofessionalism and biased policing in violation of SPD policy. As such, these two allegations were classified against an Unknown Employee. OPA determined the identity of one officer who was in the vicinity of the theft for approximately four minutes that evening. OPA interviewed that officer and he stated that he did not recall being flagged down by anyone that evening or anyone asking him for help. He further told OPA that he would not refuse to help someone and would not treat anyone differently based on race. As such, and despite best efforts, OPA was ultimately unable to identify the Unknown Employee who purportedly engaged in this conduct.

From my review of the ICV, the documentation associated with this incident, and the statements provided, I find insufficient evidence to prove that an Unknown Employee was unprofessional towards the subject. As such, I recommend that this allegation be Not Sustained – Unfounded.

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



Named Employee #2 - Allegation #2

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

Similar to Allegation #2, above, I find no evidence that an Unknown Employee engaged in biased policing or treated the subject disparately due to his race. As such, I recommend that this allegation be Not Sustained – Unfounded.

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