



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 16, 2018

CASE NUMBER: 2017OPA-1248

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	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Allegation Removed

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 that Named Employee #1 engaged in biased policing towards him, as well as that NE#1 or another Unknown Employee was “physically aggressive” towards him.

STATEMENT OF FACTS:

This case involved the response to an incident involving two individuals that had orders of protection against each other. The parties were reported to be located the same building as each other (two separate business that were adjoined), which was in violation of the orders. Two officers, including Named Employee #1 (NE#1), responded to the scene and spoke with the Complainant and the subject.

During his conversation with the Complainant, NE#1 frisked the Complainant and then put his hand on the Complainant’s shoulder. The Complainant directed NE#1 to not touch him without his consent. NE#1 told the Complainant that he understood but that, given the ongoing investigation into potential violations of law, he needed the Complainant to be seated. When the Complainant did not sit down, NE#1 called for an additional unit. However, shortly thereafter, the Complainant did sit and NE#1 went over the radio to indicate that the situation was under control.

NE#1 spoke repeatedly to both the Complainant and the subject, as well as to employees of the businesses. During his conversation with the Complainant, the Complainant told NE#1 that he was on the autism spectrum and had post-traumatic stress disorder.

Ultimately, based on his investigation, NE#1 determined that neither the Complainant nor the subject intentionally violated the protection orders, even though they both functionally did so by being in the same building at the same time. Given that the Complainant had tickets for an upcoming event in one of the adjoining businesses, NE#1 asked



the subject if she would leave and the subject agreed to do so. That information was conveyed to the Complainant. As the officers left the business, the subject appeared to be packing up to leave and verbally indicated that she would do so.

After this incident, the Complainant initiated this complaint with OPA. He asserted that the NE#1 treated him differently and in a biased manner, refused to enforce his protection order, and left the premises before verifying that the subject had departed. The Complainant further alleged that NE#1 became physically aggressive with him. This investigation followed.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

As indicated above, the Complainant alleged that NE#1 treated him differently and, as such, engaged in biased policing.

SPD Policy 5.140-POL-2 states that: “Employees shall not make decisions or take actions that are influenced by bias, prejudice, or discriminatory intent. Law enforcement and investigative decisions must be based upon observable behavior or specific intelligence. Officers may not use discernible personal characteristics in determining reasonable suspicion or probable cause, except as part of a suspect description. Employees shall not express—verbally, in writing, or by other gesture—any prejudice or derogatory comments concerning discernible personal characteristics.”

Based on my review of the record, including the officers’ Body Worn Video (BWV), there is no evidence supporting the Complainant’s claim that NE#1 engaged in biased policing. Even after the Complainant, himself, informed NE#1 that he was on the autism spectrum and suffered from post-traumatic stress disorder, NE#1 did not treat him any differently. Moreover, while the Complainant identified himself as transgender in his OPA complaint, it is unclear whether NE#1 knew that at the time. Even if he did, there is no evidence in the record that it influenced his decision-making or behavior.

NE#1’s law enforcement action, including his choice to not make any arrests, did not appear to be informed by any bias. Instead, it was due to his conclusion, after conducting a comprehensive investigation, that there was insufficient probable cause. In my opinion, this was a sound decision.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

8.200 - Using Force 1. Use of Force: When Authorized

The Complainant alleged that NE#1 was “physically aggressive” towards him during the investigation of the alleged protective order violation. OPA construed this complaint to constitute an allegation of excessive force.



SPD Policy 8.200-POL-1 instructs that “[a]n officer shall use only the force reasonable, necessary, and proportionate to effectively bring an incident or person under control, while protecting the lives of the officer or others.”

Based on a review of the BWV, the only physical contact between NE#1 and the Complainant was when NE#1 patted him down at the inception of his interaction and then again when NE#1 briefly placed his hand on the Complainant’s shoulder. The Complainant did not object to the frisk. With regard to the latter contact, NE#1 placed his hand on the Complainant’s shoulder when the Complainant stood up during their interaction. The Complainant directed NE#1 to not touch him without his consent. NE#1 told the Complainant that he understood but that, given the ongoing investigation into potential violations of law, he needed the Complainant to be seated. NE#1 removed his hand from the Complainant’s shoulder and the Complainant ultimately sat down.

First, in my opinion, this limited contact did not amount to NE#1 being “physically aggressive” towards the Complainant. Second, this contact did not rise to the level of “force” as contemplated by Department policy. Even if it had, I find that the contact was reasonable, necessary, and proportional under the circumstances of this case.

As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

At the time that this case was classified by OPA for investigation, it was unknown whether the complainant was alleging that NE#1 or another unidentified officer was physically aggressive with him. As such, OPA added an Unknown Employee as a named party. However, during its investigation, OPA determined that the only Department employee that had any physical contact with the Complainant was NE#1. For these reasons, I recommend that this allegation against an Unknown Employee be removed.

Recommended Finding: **Allegation Removed**