



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 18, 2018

CASE NUMBER: 2018OPA-0514

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	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)

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 the Named Employee stopped and arrested him because of his race. It was further alleged that the Named Employee failed to summon a supervisor to the scene in response to an allegation of bias.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Named Employee #1 (NE#1) stopped the Complainant’s vehicle. The stop was initially effectuated for two traffic violations – blocking a lane of travel and improper display of a license plate – but during the contact, NE#1 determined that the Complainant might be impaired. The Complainant agreed to perform Field Sobriety Tests and, as a result of those tests, NE#1 determined that the Complainant was DUI. The Complainant was arrested and handcuffed. He was then placed into the rear of NE#1’s patrol vehicle in order to be transported to the North Precinct. At that time, the Complainant alleged that he was stopped and arrested because of his race and that he was being discriminated against. NE#1 denied that this was the case and transported the Complainant to the precinct. NE#1 did not call a supervisor to the scene at that time.

While at the precinct, NE#1 screened the arrest with his Sergeant and, at that time, notified the Sergeant of the bias allegation. The Sergeant spoke with the Complainant and the Complainant reiterated his allegation.

The Complainant later initiated an OPA complaint and this investigation ensued. After this incident, NE#1 left the employment of SPD. As such, OPA was unable to interview him concerning this matter. OPA did speak with the Complainant. The Complainant told OPA that he was only stopped, investigated, and arrested because he was Black.



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.) This includes different treatment based on the race of the subject. (*See id.*)

Based on OPA’s review of the evidence, which included both the In-Car Video and the Body Worn Video, there is nothing in the record supporting the Complainant’s allegation of biased policing. Indeed, the Department video shows the opposite – that the stop of the Complainant was legally supported that that there was probable cause to arrest the Complainant for DUI. As such, the Complainant’s conduct, not bias on the part of NE#1, was the basis for the law enforcement action taken towards him.

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

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

Named Employee #1 - Allegation #2

5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

It was also alleged that NE#1 violated policy when he failed to call a supervisor to the scene to investigate the Complainant’s allegation of bias.

SPD Policy 5.140-POL-5 requires employees to call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. (SPD Policy 5.140-POL-5.)

It is indisputable that NE#1 failed to comply with this policy during this incident. Usually, where officers violate this policy, they fail altogether to notify a supervisor of an allegation of bias. Here, however, NE#1 did later notify his supervisor of the allegation without being prompted to do so and within a short period of time after the allegation was made. In similar cases, OPA has issued Training Referrals instead of Sustained findings.

This case is somewhat unique, however, in that NE#1 is no longer employed by SPD and, as such, a Training Referral would be of no value. That being said, it seems unjustified to issue a Sustained finding solely for that reason. Given this, I still recommend a Training Referral. Instead of training being provided, I request that the Executive Director of Human Resources or his designee send NE#1 a letter detailing how he violated policy in this instance and providing a copy of the Department’s policy.

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