



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 30, 2018

CASE NUMBER: 2018OPA-0536

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

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	Bias-free Policing - 5.140 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:

It was alleged that the Named Employees failed to call a supervisor to the scene to investigate an allegation of bias and that they may have also engaged in biased policing.

ADMINISTRATIVE NOTE:

This case was initially classified for a full investigation against the Named Employees and their Sergeant. After interviewing the Sergeant, OPA decided, with the approval of the OPA Auditor, to remove the Sergeant as a named employee and to address the allegation against him under SPD Policy 5.140-POL-7 as a Supervisor Action. That portion of the case was referred back to the chain of command to be addressed.

OPA further decided, also with the approval of the OPA Auditor, to expedite the allegations against the Named Employees. This means that OPA, with the OPA Auditor’s review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

The subject's cousin called 911 to report that the subject had been strangling his girlfriend, who was almost nine months pregnant. The subject had previous domestic violence incidents with his girlfriend, one that involved him threatening her with a firearm. When the officers arrived at the scene, the subject was no longer there. The girlfriend later called 911 to report that the subject had returned. The officers again came to the scene and located the subject.

The subject was placed under arrest. Around that time, he told Named Employee #1 (NE#1) and Named Employee #2 (NE#2) that he believed his arrest was due to his being Mexican. As such, the subject alleged that the Named Employees engaged in biased policing.

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 record, including the Department video, it is clear that there was abundant probable cause for the subject's arrest. Accordingly, the subject's conduct, not his membership in any protected class, formed the basis for the police action taken against him. There is no evidence that either of the Named Employees engaged in biased policing or, for that matter, any misconduct. Instead, the Named Employees acted appropriately and consistent with policy.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

During the review of the force used against the subject and his complaints of injuries, it was identified that NE#1 and NE#2 may have failed to immediately report an allegation of bias. It was further determined that no bias review was completed by the Named Employees' Sergeant. The Sergeant, who was originally also a named employee in this case, self-reported his failure to complete a Bias Review to OPA. He further indicated in that referral that the Named Employees did disclose the allegation of bias to him while at the precinct.

SPD Policy 5.140-POL-5 requires officers to call a supervisor in response to allegations of biased policing. The policy specifically instructs the following: "If a person alleges bias-based policing, the employee shall call a supervisor to the scene to review the circumstances and determine an appropriate course of action." (SPD Policy 5.140-POL-5.)



It is indisputable that the Named Employees failed to immediately call their Sergeant to the scene. Indeed, they did not notify the Sergeant until after their return to the precinct. As such, they acted contrary to the express language of the policy. Moreover, they prevented the Sergeant from conducting an in-person investigation of the allegation of bias at the scene, which was also inconsistent with policy.

That being said, I recommend that the Named Employees receive Training Referrals rather than Sustained findings. I base this on the fact that they did, in fact, report the bias allegation and because this appears to have been a mistake rather than misconduct. Important to this determination was the fact that neither officer had ever been disciplined before for failure to comply with this policy and that neither had ever received a Sustained finding in any other OPA case.

- **Training Referral:** NE#1 and NE#2 should receive retraining concerning SPD Policy 5.140-POL-5. They should be reminded of their obligation to call a supervisor to the scene to provide for a full investigation into an allegation of bias. The Named Employees should be counseled concerning their failure to do so here and their chain of command should ensure that they more closely comply with this policy moving forward. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #2 - Allegations #1

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

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

For the same reasons as stated above, I recommend that this allegation be Sustained and I refer to the above Training Referral. (See Named Employee #1, Allegation #2.)

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