



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 10, 2019

CASE NUMBER: 2018OPA-0819

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Not Sustained (Unfounded)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Inconclusive)
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Not Sustained (Unfounded)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	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:

The Complainant alleged that Named Employee #1 subjected him to biased policing. It was further alleged that both Named Employees failed to assist the Complainant in filing an OPA complaint and did not report an allegation of potential serious misconduct and/or OPA.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint

While engaging in patrol duties, the Named Employees observed the Complainant, who they recognized as possibly having an open warrant. The Named Employees detained the Complainant and ran his name. They verified that he did, in fact, have an open warrant. When the officers took the Complainant into custody, he complained that he was injured. Accordingly, after transporting the Complainant to the precinct, the officers took the Complainant to the hospital to receive medical treatment. The Complainant was ultimately informed by medical professionals that he was suffering from active drug use and that he should stop using drugs.



While at the hospital. The Complainant alleged that Named Employee #1 (NE#1) wanted to call him a racial slur. NE#1 denied that this was the case, but informed his supervisor that an allegation of bias had been made against him. The Body Worn Video (BWV) further established that, at around that same time, the Complainant also stated that he had been “assaulted” by the Named Employees. Neither Named Employee appeared to hear this statement and neither responded to the Complainant.

A supervisor came to the scene and the officers screened the incident with him. Neither of the Named Employees disclosed the Complainant’s allegation that he had been assaulted.

SPD Policy 5.002-POL-2 requires that Department employees assist any person who wishes to file a Complainant. While the Complainant indisputably made allegations of misconduct, he never requested that either of the officers file an OPA complaint on his behalf. Moreover, NE#1 did notify a supervisor of the complaint of bias and that supervisor provided OPA’s contact information to the Complainant.

For these reasons, a given that there was no explicit request for a complaint made by the Complainant to the Named Employees, I recommend that this allegation be Not Sustained – Unfounded as against both officers.

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

Named Employee #1 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. (SPD Policy 5.002-POL-6.) The policy further states the following: “Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation.” (*Id.*)

Here, BWV recorded that the Complainant stated in the Named Employees’ presence that he had been assaulted. This statement was made when Named Employee #2 (NE#2) was wheeling the Complainant, who was in a wheelchair, out of the hospital. NE#1 was also in the vicinity of NE#2 and the Complainant at that time. This was an allegation of potential serious misconduct that the Named Employees were required to report to a supervisor and/or to OPA.

Both of the Named Employees denied that they heard the Complainant allege that he had been assaulted. As such, they confirmed that they did not report that statement to a supervisor or to OPA.

Based on OPA’s review of the video, it is unclear whether the Named Employees heard the assault allegation. Indeed, they did not respond to the Complainant when he made that statement. Moreover, NE#1 did, in fact, report the Complainant’s allegation of bias. It makes no sense that NE#1 would have promptly reported the bias allegation but withheld the claim of assault from a supervisor. Lastly, and while not germane to the officers’ obligation to report, I note that the Complainant’s allegation of assault was clearly unsubstantiated and that, based on his booking photographs, he had no apparent injuries.



The failure to report potential misconduct would constitute a violation of policy; however, the record is insufficient to establish that the Named Employees acted contrary to policy in this case. As such, I recommend that this allegation be Not Sustained – Inconclusive as against both Named Employees.

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

Named Employee #1 - Allegation #3

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

As discussed above, the Complainant alleged that NE#1 called him a racial slur. However, based on a review of Department video, which captured virtually the entirety of the interaction between NE#1 and the Complainant, there is no evidence supporting that NE#1 ever did so.

For these reasons, I find no support for the claim that NE#1 engaged in biased policing. As such, I recommend that this allegation be Not Sustained – Unfounded as against NE#1.

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

Named Employee #2 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint

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

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

For the same reasons as stated above (*see* Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Inconclusive.

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