



## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 28, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0531

### Allegations of Misconduct and the 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 (Inconclusive)
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

**Imposed Discipline**

Resigned Prior to Discipline
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**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)
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

**Named Employee #3**

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)

**Named Employee #4**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

**Imposed Discipline**

Written Reprimand
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**Named Employee #5**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)



**Named Employee #6**

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Inconclusive)

**EXECUTIVE SUMMARY:**

The Complainant alleged that SPD employees made comments to her that were biased and unprofessional. She further alleged that other unknown SPD officers heard the comments but did nothing about it.

**SUMMARY OF INVESTIGATION:**

The Complainant, who identifies as transgender and uses she/her pronouns, filed an OPA complaint in which she alleged that SPD officers made unprofessional and biased statements towards her. She recounted that she was walking down the sidewalk in Capitol Hill when an unmarked blue Yukon SUV drove up. There were police officers inside. She said that one of the police officers appeared to be taking her picture and asked the Complainant if she “had a dick under” her skirt. She said that she told the officer to “come take a look” and he replied that he would “need a microscope” to do so. She asked: “Then do you want to see it?” The officers drove off with one saying: “yaa, you got something under there.” She said that she saw a marked police car parked in that vicinity. She called out to the officers in that car to do something, but they did not help. She said that, later that evening, the unmarked SUV again drove by her and an officer again yelled out to the Complainant to “show them what’s under my skirt.” She started yelling at them, but they drove off while still saying things to her.

OPA attempted to interview the Complainant to obtain more details concerning what occurred; however, the Complainant did not participate in an interview. Accordingly, OPA was unable to determine a number of relevant facts from the Complainant’s perspective, including: a description of the officer who made the statements or, for that matter, whether it was more than one officer who made the statements; additional information concerning the officers in the marked SPD vehicle who allegedly observed the conduct and failed to act; and background concerning the rock throwing at the East Precinct, which was later described by the Named Employees as the basis for initially contacting the Complainant.

There was no video of this incident recorded by the Complainant and she did not provide the names of any witnesses who may have seen and heard what occurred.

OPA was able to identify the SUV in question and, given the time and date provided, determined the officers who were therein. The SUV was not equipped with In-Car Video (ICV). While the officers were all assigned Body Worn Video (BWV), this incident was not captured on that video. OPA interviewed all of the Named Employees.

Named Employee #1 (NE#1) said that he and the officers with him were investigating an individual who had thrown rocks at the East Precinct. He saw the Complainant, who he felt closely matched the description of the perpetrator. They stopped and he rolled his window down. At that time, the Complainant said: “Oh, you want me? What are you looking at?” The Complainant then lifted up her dress and said: “Is this what you’re looking for? Do you want to suck this penis?” NE#1 replied: “I didn’t have my microscope I wouldn’t be able to see it.” The Complainant then did a curtsy and said: “Oh, so you do want me.” NE#1 explained that, at this time, he was thinking about how to get the Complainant away from the 50 to 100 protestors that were in the vicinity to perform a Terry stop or to make an arrest. He and the other officers looped back again to see whether the Complainant had separated from the crowd, but she



had not. She made a comment about the officers looking for her again. Ultimately, the officers did not take any action because they were worried that it would escalate the crowd. NE#1 denied that, aside from his comment concerning the microscope, he or other officers in the car made the statements attributed to them by the Complainant. He described those alleged statements as “shocking” and said that he would have remembered them. NE#1 also did not specifically recall any marked patrol cars that were in the area. Lastly, NE#1 acknowledged that his statement was juvenile and unprofessional. He did not hear any other officers make statements that were biased or inappropriate.

Named Employee #2 (NE#2) recalled seeing the Complainant on the evening in question. He stated that she was suspected of throwing rocks at the East Precinct. He recalled rolling slowly by the Complainant while in the SUV. He remembered seeing the Complainant lift up her skirt and he heard statements made back and forth, but he did not recall the specific nature of what was said. However, he did not hear profanity or any statement that suggested bias. He did not see a patrol vehicle in the area or hear the Complainant make statements requesting assistance from other officers. NE#2 remembered seeing the Complainant again but did not think that officers said anything to her at that time.

Named Employee #3 (NE#3) had no recollection whatsoever of this incident. This was the case even though he was in the car and even after OPA attempted to refresh his recollection at his interview.

Named Employee #4 (NE#4), a Sergeant, was in the SUV with the other officers. He said that they were aware that someone had been throwing rocks at the East Precinct. The officers drove by the Complainant, who appeared to match the description. He confirmed that he took a picture of the Complainant. He said that he did so because she was wearing a jacket with a distinctive emblem that he felt could be used to determine whether she was the correct suspect. He told OPA that it was later determined that she likely was. He heard the Complainant ask officers if they wanted to see her “dick.” He recalled NE#1 responding with a comment referencing a “microscope.” He did not hear any other comments, including any statements indicating bias. He did not see any marked SPD vehicles in the vicinity at the time. NE#4 lastly did not remember seeing the Complainant on a second occasion that night.

Lastly, OPA conducted a GPS search for marked patrol vehicles that were in the vicinity at the approximate time of the incident. There were a number of vehicles identified; however, the vast majority were just passing through. Two vehicles were in the vicinity for more than a transitory period of time, but OPA could not definitively determine whether either was in the immediate vicinity of the incident and, if so, whether the officers therein observed what occurred and heard the Complainant’s pleas for assistance.

### **ANALYSIS AND CONCLUSIONS:**

#### **Named Employee #1 - Allegation #1**

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

The Complainant alleged that an SPD officer made biased statements towards her. Based on its investigation, OPA determined that NE#1 was involved in a back and forth with the Complainant. NE#1 acknowledged telling the Complainant that he would need a “microscope” to see her penis; however, he denied making the other statements attributed to him by the Complainant, describing them as “shocking.”

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



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characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*)

If it could be proved that NE#1 made the statements attributed to him by the Complainant, OPA would have found that this constituted biased policing. However, NE#1 denied making any biased comments and there are no independent witnesses or video establishing the contrary. Unfortunately, and despite grave concerns regarding what the Complainant reported experiencing, this precludes OPA from reaching a definitive conclusion on this allegation.

Accordingly, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

SPD Policy 5.001-POL-10 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-10.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*)

If the Complainant’s version of events were true, NE#1 would have clearly violated the Department’s professionalism policy. However, as discussed above, there is insufficient evidence to establish that NE#1 did, in fact, make all the statements attributed to him. That being said, even under NE#1’s account of what he said, he was unprofessional. Telling the Complainant that he needed a “microscope” to see her penis was inappropriate and juvenile. Moreover, it is irrelevant whether the comment was made in response to purported profane statements and actions made by the Complainant. NE#1 is held to a higher standard than members of the community and he failed to meet that standard here.

Accordingly, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #2 - Allegation #1**

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

All of the officers who recalled this incident – NE#1, NE#2, and NE#4 – pointed to NE#1 as being the only one who interacted with the Complainant. As OPA was unable to interview the Complainant and given that there is no video depicting what occurred, there is no evidence to contradict this.

As such, OPA recommends that this allegation be Not Sustained – Unfounded as against NE#2, NE#3, and NE#4.

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



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**Named Employee #2 - Allegation #2**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

While OPA could not establish that NE#2, NE#3, and NE#4 made unprofessional or biased statements, OPA did determine that they were all in close proximity to NE#1 at the time he interacted with the Complainant. Accordingly, they either heard or should have heard the comment he admittedly made to her. However, none of these officers did anything concerning this, whether speaking to NE#1 to tell him that his statement was inappropriate or taking steps to report the statement to the chain of command and/or OPA.

With regard to NE#2 and NE#3, OPA finds it disappointing that they did not do anything in response to NE#1's statements. By taking no action, it operates almost as an endorsement of what NE#1 said. Since this incident occurred, SPD began training officers on ABLE (Active Bystanders in Law Enforcement). Under this program, officers are instructed to do the exact opposite of what the witness officers did here and to call out and intervene in inappropriate acts and statements when they occur.

NE#2 and NE#3, as well as all other SPD officers, are now on notice that future failures to act in similar situations will no longer be tolerated and will result in discipline. As the program is not yet in effect, OPA issues them a Training Referral here.

- **Training Referral:** NE#2 and NE#3 should be instructed to act and intervene when another officer engages in inappropriate behavior, including unprofessional statements. NE#2 and NE#3 should be aware that future similar conduct may result in discipline. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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

**Named Employee #3 - Allegation #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 #2 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #3 - Allegation #2**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #2 – Allegation #2).

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



**Named Employee #4 - Allegation #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 #2 – Allegation #1), OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #4 - Allegation #2**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

OPA finds NE#4's inaction to be more egregious than that of NE#2 and NE#3 because he was one of NE#1's supervisors during the incident. However, he did nothing after hearing NE#1's statement, which was, at the very least, unprofessional. He did not counsel NE#1 concerning the statement, he did not document that the statement was made, he did not report the statement to members of his chain of command, and he did not make an OPA referral. As discussed in the context of NE#2 and NE#3, NE#4's inaction, particularly as a supervisor, serves as an endorsement of NE#1's comment. In this regard, and again given his supervisory responsibilities, he bears at least partial responsibility and culpability for what occurred.

Accordingly, OPA finds that NE#4's inaction was unprofessional and recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #5 - Allegation #1**

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

OPA found no evidence indicating that any other officer was present in the SUV or heard the comments that were made by NE#1. Accordingly, OPA recommends that this allegation and Allegation #2, below, be Not Sustained – Unfounded.

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

**Named Employee #5 - Allegation #2**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

For the same reasons as stated above (see Named Employee #5 – Allegation #1), OPA recommends that this allegation be Not Sustained - Unfounded.

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



**Named Employee #6 - Allegation #1**

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

The Complainant asserted that she tried to notify officers in a marked SPD vehicle of the misconduct engaged in by the officers in the SUV, but those officers failed to assist her or to do anything.

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.*)

If the Complainant flagged officers down and made allegations of misconduct, those officers would have been required to act. However, OPA could not verify whether this occurred and, if so, which officers the Complainant reported misconduct to. This prevents OPA from reaching a definitive determination on this allegation.

For these reasons, OPA recommends that this allegation be Not Sustained – Inconclusive.

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