



To: Andrew Myerberg, OPA Director
CC: Mark Grba and Grainne Perkins, OPA Assistant Directors
From: Lynn Erickson, OIG Public Safety Auditor/Investigator
Date: 2/5/2021
Re: 2020OPA-0233

CERTIFICATION:

OIG has reviewed the Investigation for 2020OPA-0233 and is certifying the investigation as timely and objective. OIG is not certifying the investigation as thorough.

This case involves an allegation from a community member that on April 13, 2020, the Named Employee (NE) pulled a gun on him when he approached the NE's parked patrol vehicle to ask about donating emergency supplies to SPD and SFD. The Complainant was timely interviewed before the end of April, and OPA was able to identify both a Named Employee and a Witness Employee.

However, almost more than three months elapsed before an interview was scheduled with the NE. Shortly after the NE missed their scheduled interview with OPA on August 19, 2020, the investigation was tolled because both the NE and the WE were on leave. Their interviews occurred on November 17, 2020. Thereafter, the investigation again lagged for more than two months until it was submitted to OIG for certification review on January 28, 2021.

In assessing thoroughness, per 3.29.260 (F.2), OIG considers whether interviews were thorough, whether conflicting testimony was sufficiently addressed, whether additional clarifying information would strengthen the investigation and whether the investigation was conducted in accordance with the OPA Manual.

In this case, OIG finds that the interviews with the NE and the WE were not thorough because neither of them was asked questions that were central to the allegation(s) at issue. More specifically, during the WE interview, the witness was never asked any questions about what they observed regarding the Complainant's allegation that the NE pulled a gun on him. Of his own accord, the WE made a statement to the Investigator that confirmed he heard the Complainant say to the NE "you pulled your gun on me". The WE then stated, "Never once was a gun ever pointed at him or shown to him". However, the OPA Investigator immediately switched subjects and never questioned the WE further on this point. Additional relevant questions to assess what the WE witnessed with regard to the allegation would have included how the WE knew the NE never pointed or showed his gun to the Complainant, what his line of sight was to the NE and the NE's weapon, whether he



(the WE) had also pulled his service weapon, if the WE and NE had discussed unholstering their weapons before exiting the car, at what point in the encounter the Complainant was determined to not be a threat, and at what point he heard the Complainant make a statement to the NE about pulling his gun on him.

Similarly, during the NE's interview, the NE volunteered the information that the Complainant asked him "you're pointing your gun at me?" and claimed this was said at the end of the encounter after he raised his gun above the door level when hanging it back up. Again, the OPA Investigator immediately changed subjects and did not question the NE further regarding the Complainant's allegation. Additional relevant questions to assess the NE's actions and whether they violated SPD policy (5.001.10 and 8.300, POL-3, 5) would have included why, once he recognized the Complainant and knew him to not be a threat, he did not put away his weapon sooner. Additionally, the NE could have been asked to respond to the Complainant's version of events that he could see the NE with his service weapon in his hand at his side during the whole encounter, how far apart the Complainant was standing from him during their interaction, and to describe in more detail how/when he hung up his gun and how his gun would have come up above the vehicle door and only into the Complainant's sight at that time.

Although there was no BWV or ICV of the incident, OPA did obtain security camera from the Safeway parking lot where the incident occurred. This video was played for both the WE and the NE prior to their interviews. Despite having this additional objective evidence, OPA never questioned the WE or the NE about what could or could not be seen on the video during their interviews as part of their testimony. The OPA Investigator also did not conduct any independent assessment in the ROI of what can be seen on the video as to whether it supported or refuted the testimony of the NE relevant to the alleged policy violations.

Finally, even though the investigation included a potential biased based policing violation based on the information provided by the Complainant, the NE was not adequately informed of the nature of the Complainant's allegation or questioned on all aspects of the allegation. Instead, the NE was asked a single yes or no question at the end of the interview to the effect of "were your actions influenced by bias, prejudice or discriminatory intent?"

According to OPA's Manual, "the Investigator *must not* avoid asking necessary questions. Specific and sometimes direct questions *must be* asked in order to address the elements present in each allegation" (emphasis added). The OPA Manual also states, "Interview questions *should address* the elements present in the allegation(s) raised against the named employee" (emphasis added).



In the current case, OIG is not directing additional investigation. Unfortunately, in OIG's estimation, not only can the above identified deficiencies not be sufficiently remedied, but given the delays in OPA's investigative process, there is not enough time left in the investigation to address them.

Thank you very much,

Lynn Erickson

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