



CLOSED CASE SUMMARY

ISSUED DATE: JULY 10, 2018

CASE NUMBER: 2017OPA-0268

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	6.020 - Arrests and Detentions of Foreign Nationals 1. Policy Identifying Foreign Nationals	Not Sustained (Inconclusive)
# 2	15.180 Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	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 Employee may have violated Department policy when he contacted the Department of Homeland Security concerning a foreign national who was in the Named Employee’s custody and turned that foreign national over to federal law enforcement agents. It was further alleged that the Named Employees’ General Offense Report may have been incomplete.

STATEMENT OF FACTS:

Named Employee #1 (NE#1) was, at the time of the incident, a bicycle officer assigned to the West Precinct. He had previously arrested the subject (approximately one year earlier) for delivery of crack cocaine. At that time, the subject was given a one year park exclusion notice from Victor Steinbruek Park. During a subsequent investigation, NE#1 engaged in a narcotics operation that included contacting the subject to set up a potential sale. Prior to doing so, NE#1 conducted a “Triple I” search, which would normally reveal open warrants and other similar information. This search was negative. Ultimately, NE#1 arranged to purchase a quantity of crack cocaine from the subject at Victor Steinbruek Park. The subject arrived at the prearranged time and place and, at that time, was arrested and taken into custody.

The subject was transported to the West Precinct where his arrest was processed. At that time, the subject showed NE#1 an Employment Authorization Document (EAD), but no other form of identification. The subject was asked upon his arrest whether he wanted a consular notification and he declined. NE#1 told OPA that when he previously arrested the subject, the subject had shown that same identification and had given another alias. NE#1 stated that it was a red and white card that he was unfamiliar with and that he did not have the expertise to determine whether it was valid or fraudulent. He indicated that his goal was to ensure that he had the correct name for the person he was arresting. NE#1 explained to OPA that he and other officers had “developed a relationship” with the Homeland Security Investigations team (HSI). HSI had told the officers to call if they had any questions that fell within HSI’s expertise.

NE#1 stated that, when he called HSI, they verified that the subject had a valid EAD; however, HSI determined that it was void based on ongoing criminal activity committed by the subject. HSI also determined that the subject had a



pending deportation order and open federal warrants. HSI requested that the subject be turned over to its custody and NE#1 agreed to do so. The subject was subsequently deported from the United States.

The Complainant's organization represented the subject in his legal proceedings relating to his arrest and pending deportation. The Complainant alleged that NE#1 used the subject's EAD as a pretextual basis for notifying HSI and Immigrations and Customs Enforcement (ICE). In an email to the then Chief and Deputy Chief of the Department, the Complainant wrote:

I am deeply concerned that this type of incident will completely undermine the City's efforts to be a welcoming City and SPD's work to build trust with immigrant and refugee communities. If SPD officers can make a referral to ICE solely on the basis of an uninformed "hunch" that an immigration document is fake, then every immigrant in the City could be subject to such a referral.

The Complainant's email was referred to OPA and was construed to set forth an allegation of misconduct against NE#1. As a result, this investigation ensued.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

6.020 - Arrests and Detentions of Foreign Nationals 1. Policy Identifying Foreign Nationals

In evaluating this allegation of potential misconduct, OPA applies the version of SPD Policy 6.020 that was in effect at the time of the incident. That version of the policy concerned the arrests and detentions of foreign nationals, and further specifically discussed the Department's practice concerning identifying foreign nationals who were the subjects of law enforcement activity. In this regard, the policy stated that:

It is the policy of the Department that officers will not request specific documents for the sole purpose of determining someone's immigration or alien status. If offered by a person and not specifically requested by the officer, it is permissible to rely on immigration documents to establish someone's identity in response to a general request for identification. Officers will not initiate police action based solely on an individual's immigration or alien status, nor shall they ask for identification or documents to establish the person's immigration or alien status.

Here, NE#1 reported that the subject was arrested as a result of a narcotics operation. NE#1 recounted that a "Triple I" search of the subject did not reveal any outstanding federal warrants or a pending deportation order. I note that this statement is inconsistent with information that was apparently provided by former Chief of Police Kathleen O'Toole to former OPA Director Pierce Murphy. In an email generated by Director Murphy memorializing a conversation he had with Chief O'Toole, he wrote:

In the course of our conversation, Chief O'Toole told me she had learned the real reason the arresting officer had contacted HSI was that the officer ran the subject's name through a "Triple I" check and discovered two prior deportation orders and an arrest



warrant issued by an Immigration Judge. The Chief had been told that the arresting officer did not include this information in his GOR because of some long-standing practice in Patrol.

From OPA's investigation (and as discussed more fully below), the assertion that NE#1 had advance knowledge of the deportation order and federal warrants is not only inconsistent with NE#1's recollection, but is also contradicted by the objective evidence. There is additionally no evidence of any "longstanding practice of patrol" to not include such information in the General Offense Report. It is unclear whether Chief O'Toole was misinformed about this issue or if Director Murphy misheard her and wrote incorrect information in his email. Regardless, this inconsistency does not alter my decision in this case.

When processing the arrest, the subject presented a form of identification that NE#1 reported being unfamiliar with. He stated that he contacted HSI to verify whether the identification was valid and to conclusively determine what the subject's name was.

The Complainant alleged that NE#1 used the identification, which was void, as a pretext to report the subject to HSI and ICE. In his General Offense Report, NE#1 wrote the following: "Once at the West Precinct, I observed a card in [the subject's] possession that appeared to be some sort of counterfeit identification card permitting [the subject] to work in the US." A copy of the EAD was not attached to the General Offense Report and, as such, I have no way to determine whether it appeared to be invalid or counterfeit as NE#1 wrote in his report. If it did, then I believe that it would have been reasonable – or at least not a policy violation – for him to contact HSI to verify this fact. If, as the Complainant suggests, the EAD was not facially invalid or counterfeit, the contact with HSI would be more questionable and it would tend to prove the allegation that the EAD was used as a pretext to make a notification to federal immigration authorities. Ultimate, the evidence is inclusive on this issue. There is simply insufficient information in the record to prove one way or the other whether the EAD was improperly used as a pretext to report the subject to HSI and/or ICE.

SPD policy at that time prohibited NE#1 from requesting documentation from the subject for the express purpose of determining the subject's immigration status. NE#1 reported that he did not do so and, instead, that the subject presented the EAD as his identification upon arrest. Once that identification was presented, NE#1 was permitted to use it to determine the subject's name. With regard to NE#1 contacting HSI concerning the EAD, this version of the policy did not either explicitly or implicitly prevent cooperation or communication between SPD and HSI or ICE. It further did not prohibit NE#1 from making inquiries to either entity to determine the validity of identification affirmatively presented by a subject.

Lastly, while this version of the policy prevented NE#1 from taking law enforcement action against the subject solely based on the subject's immigration status, this issue is also inconclusive. While NE#1 claimed to have run a "Triple I" check on the subject prior to engaging in the narcotics operation that resulted in the subject's arrest, he stated that this check yielded no results. When interviewed by OPA, HSI confirmed that such a check would not have revealed the open federal warrants or the pending deportation order. Moreover, OPA did its own searches to determine what could be found concerning the federal warrants and the deportation order. OPA was unable to locate this information when it ran a "Triple I" check or, for that matter, when it ran a WACIC/ACCESS search. This tends to indicate that NE#1 was not aware of this information when he arrested the subject and when he called HSI.



The Complainant's allegations, if true, are certainly concerning. In this day and age, it is essential that SPD officers abide by the Department's policies, as well as the City's stated policies and practices, when taking law enforcement action towards foreign nationals. Here, however, there is simply insufficient evidence to conclusively establish whether there was a violation of this policy. For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

15.180 Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

SPD Policy 15.180-POL-5 requires that officers complete a General Offense Report as part of a primary investigation. The policy further requires that this report be complete, thorough, and accurate.

This allegation was classified for investigation against NE#1 based on the fact that he included no reference to the deportation order or federal warrants in his General Offense Report.

As noted by NE#1, he did not locate any evidence of the deportation order or any federal warrants when he ran the "Triple I" check. Moreover, the check he ran came back with negative results. It would have been advisable to note that the check was run and the results of that check; however, I do not believe that his failure to do so constituted a policy violation.

A larger concern for OPA was NE#1's failure to include in the report the information he learned from HSI concerning the deportation order and federal warrants. While not germane to the incident and conduct that formed the basis for the subject's arrest, it was relevant to exactly why the subject was turned over to federal custody. NE#1's failure to include such information here rendered his report incomplete. I note that it also left open questions and confusion that, at least in part, caused the initiation of this OPA investigation.

Lastly, I believe that it also would have been advisable for NE#1 to include a copy of the subject's EAD as an attachment to the General Offense Report. This is particularly the case given that NE#1 asserted his belief in the report that the EAD "appeared to be some sort of counterfeit identification card" and that this formed the basis for him contacting HSI in the first place.

That being said, I do not believe that any of these omissions warrant a sustained finding. Instead, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1's chain of command should discuss his report in this case with him and should encourage him to ensure that he is more complete in the future. This is particularly the case where immigration matters are involved, given the increased scrutiny of the Department in this area. This counseling and any associated retraining should be documented and this documentation should be maintained in an appropriate database.

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