



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0372

Issued Date: 10/02/2017

| Named Employee #1 | |
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| Allegation #1 | <u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias Based Policing (Policy that was issued August 1, 2015) |
| OPA Finding | Not Sustained (Unfounded) |
| Allegation #2 | <u>Seattle Police Department Manual</u> 5.140 (5) Bias-Free Policing: Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing (Policy that was issued August 1, 2015) |
| OPA Finding | Sustained |
| Final Discipline | Written Reprimand |

| Named Employee #2 | |
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| Allegation #1 | <u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias Based Policing (Policy that was issued August 1, 2015) |
| OPA Finding | Not Sustained (Unfounded) |
| Allegation #2 | <u>Seattle Police Department Manual</u> 5.140 (5) Bias-Free Policing: Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing (Policy that was issued August 1, 2015) |
| OPA Finding | Sustained |

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| Final Discipline | Written Reprimand |
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| Named Employee #3 | |
| Allegation #1 | <u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias Based Policing (Policy that was issued August 1, 2015) |
| OPA Finding | Not Sustained (Unfounded) |
| Final Discipline | N/A |

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| Named Employee #4 | |
| Allegation #1 | <u>Seattle Police Department Manual</u> 5.140 (2) Bias-Free Policing: Officers Will Not Engage in Bias Based Policing (Policy that was issued August 1, 2015) |
| OPA Finding | Not Sustained (Unfounded) |
| Final Discipline | N/A |

INCIDENT SYNOPSIS

The Named Employees arrested the community member complainant.

COMPLAINT

An SPD supervisor reported to OPA that a male under arrest (complainant) made statements alleging biased policing. Upon reviewing In-Car Video (ICV), the supervisor further alleged that Named Employees #1 and #2 did not report the complaint of bias to their supervisor. During intake, OPA added Named Employees #3 and #4 as they were involved, contacted the community member complainant during his arrest, and used language that could indicate bias-based policing.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Search for and review of all relevant records and other evidence
3. Review of In-Car Video (ICV)
4. Review of Use of Force documents
5. Interviews of SPD employees

ANALYSIS AND CONCLUSION

The complainant alleged that he was arrested and mistreated based on the fact that he was African American. However, based on a review of the evidence in the record and applying a preponderance of the evidence standard, the OPA Director found that the Named Employees did not engage in biased policing.

It could not be reasonably disputed that there was probable cause for the complainant's arrest. The victim reported that she had been assaulted by the complainant and that he had forcibly taken her belongings. Other civilian witnesses confirmed that the complainant was the primary aggressor and that he had possession of the victim's property. Notably, once the officers believed that there was probable cause for the complainant's arrest, his arrest was mandatory given that it was a domestic incident.

From a review of the ICV, the complainant was angry and most likely impaired. He was continually uncooperative with the officers. He refused to be seated in the police car, his behavior required that he be transported to the jail on a gurney, and, once on the gurney, he resisted attempts to secure his person. He was additionally verbally abusive to the officers, using pejorative language and swear words.

While the complainant asserted that he was treated differently because of his race, the OPA Director found that his treatment was instead based on his conduct and demeanor.

The OPA Director, like the chain of command, was concerned with the comments made by a number of the Named Employees regarding the complainant's military service. The OPA Director was also concerned with the fact that an officer, who he found to have been Named Employee #2, told the complainant that he was "acting like a child" and then said, "good boy." These latter comments are discussed more fully below.

With regard to Named Employee #1 specifically, the OPA Director did not find that he engaged in biased policing.

The OPA Director found that Named Employee #1 failed to report the complainant's statement that he was being treated differently because of his race. Notably, at the time the comment was

made, Named Employee #1 was standing right next to the complainant holding his arm. While, at his OPA interview, Named Employee #1 stated that he did not recall hearing the statement, the OPA Director found that that, based on a preponderance of the evidence, he either heard or should have heard what the complainant audibly and clearly stated.

Once that statement was made, SPD policy required Named Employee #1 to notify a supervisor to come to the scene and screen the incident in person. Named Employee #1 did not do so. Notably, were it not for a Lieutenant's later review of ICV, the complaint of bias would never have been properly investigated. Named Employee #1's failure to make this notification was in violation of policy.

For the same reasons as articulated above, the OPA Director did not find that Named Employee #2 engaged in biased policing.

The OPA Director was concerned with Named Employee #2's comments generally and of particular concern was that Named Employee #2 said "good boy" to the complainant. It was noted that while Named Employee #2 stated at his OPA interview that he did not recall saying this, the OPA Director found that he did make that statement based on ICV review and on the interviews of the other Named Employees.

Even though the OPA Director believed that Named Employee #2's comments were unprofessional and inappropriate, he did not find that they necessarily established bias on the part of Named Employee #2. The word "boy" has a number of negative meanings and has historically had racist connotations when used towards African American men.

Adopting the Supreme Court's guidance, the OPA Director found the context in which "good boy" was said here to be determinative. From a review of the ICV, the term was used in connection with Named Employee #2's earlier statement that the complainant was acting like a child. That statement, while problematic in and of itself, was based on the complainant's behavior, not his race. While Named Employee #2 should have known better and should not have made such comments, the OPA Director did not find this to be evidence of racial bias.

At the time that the complainant complained that he was being treated differently based on his race, Named Employee #2 was standing in front and to the right of him. The complainant appeared to be directly addressing Named Employee #2. However, Named Employee #2 neither responded to the complainant nor reported the statement. Notably, Named Employee #2 admitted hearing the statement at his OPA interview, but stated that he did not believe it rose to the level of a complaint of bias. In this regard, Named Employee #2 was incorrect. Policy required him to notify a supervisor at that time and he failed to do so.

For the same reasons as stated above, the OPA Director found that Named Employee #3 did not engage in biased policing.

Named Employee #3 made several comments referencing the complainant's military status. As with the statements made by Named Employee #2 and Named Employee #4, the OPA Director found these statements to be unprofessional and inappropriate. However, as with the other Named Employees, he did not believe that they demonstrated bias.

The OPA Director commended the chain of command for identifying these statements as problematic and for taking remedial action in the form of counseling. He agreed that these statements should not have been made, and shared the chain of command's concern that they served to exacerbate an already volatile situation rather than to de-escalate it as policy dictates. However, the OPA Director did not find that these comments established that Named Employee #3 engaged in biased policing.

Lastly, the OPA Director also found that Named Employee #4 did not engage in biased policing.

Named Employee #4, like Named Employee #3, referenced the complainant's military status. At one point, Named Employee #4 brought up the fact that the complainant was a private and raised the possibility of a court martial. At his OPA interview, Named Employee #4 asserted that he made the statement about the court martial to educate the complainant about the gravity of the situation that he was facing. With regard to the statement about the complainant's rank, Named Employee #4 stated that it was made because he "wanted to know if there was a reason that he had been recently—received non-judicial punishment or a demotion in rank."

Again, while these statements were unprofessional and inappropriate, the OPA Director did not believe that they established biased policing on the part of Named Employee #4.

FINDINGS

Named Employee #1

Allegation #1

A preponderance of the evidence showed that the Named Employee did not engage in bias-based policing. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias Based Policing*.

Allegation #2

A preponderance of the evidence showed that Named Employee #1's failure to notify a supervisor was in violation of policy. Therefore a **Sustained** finding was issued for *Bias-Free Policing: Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing*.

Discipline Imposed: Written Reprimand

Named Employee #2

Allegation #1

A preponderance of the evidence showed that the Named Employee did not engage in bias-based policing. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias Based Policing*.

Allegation #2

A preponderance of the evidence showed that Named Employee #2's failure to notify a supervisor was in violation of policy. Therefore a **Sustained** finding was issued for *Bias-Free Policing: Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing*.

Discipline Imposed: Written Reprimand

Named Employee #3

Allegation #1

A preponderance of the evidence showed that the Named Employee did not engage in bias-based policing. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias Based Policing*.

Named Employee #4

Allegation #1

A preponderance of the evidence showed that the Named Employee did not engage in bias-based policing. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias Based Policing*.

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.