



## **CLOSED CASE SUMMARY**

ISSUED DATE: MARCH 28, 2018

CASE NUMBER: 2017OPA-1054

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)
# 2	6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement	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 did not announce himself when he arrived at the Complainant’s residence, did not explain why he went to the back of the Complainant’s property, entered the back yard without the Complainant’s permission, and refused to wait in the front yard with the other two officers when asked to do so by the Complainant.

### **ANALYSIS AND CONCLUSIONS:**

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

#### ***5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times***

The Complainant’s daughter was an alleged victim of domestic violence. An officer dropped his daughter off at the Complainant’s residence and helped her bring her property into the home. A short while later, three other officers arrived at his residence. Two of the officers knocked at his door and the Complainant’s daughter went outside with them. A third officer – Named Employee #1 (NE#1) – went to the back of his house through his driveway. When OPA asked whether the officer opened up a gate to enter his backyard, the Complainant said that NE#1 did not and instead entered the backyard through a carport. The Complainant went outside and asked NE#1 what he was doing but NE#1 did not respond. He asked NE#1 to go into the front yard and NE#1 said “no.” The Complainant again asked NE#1 to leave and he refused. The Complainant asked NE#1 whether he had any rights as a homeowner. NE#1 told the Complainant that the officers would let him know why they needed access to his backyard after they were done, but none one ever provided him with that information. The Complainant did not interact with the other two officers who were speaking with his daughter. The Complainant was upset because he felt that this rights were being violated and he went back into his home. The Complainant also asserted that NE#1 was unprofessional for failing to explain why he had accessed the Complainant’s backyard and for failing to leave when requested by the Complainant.

At his OPA interview, NE#1 explained that the officers first went to the subject’s mother’s house to search for him. The officers had probable cause to arrest the subject at that time for domestic violence against the Complainant’s



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daughter. The subject's mother told the officers that the subject could be at the Complainant's house. The officers then went to that location. Two of three officers contacted the Complainant, while NE#1 walked through the carport down a long driveway. NE#1 reported that he set up a containment position at the back end of the driveway. At this location, there was an open fence leading into the backyard. NE#1 told OPA that he did not go into the backyard and remained standing at the end of the driveway, which gave him a vantage point both to the front and back of the house. NE#1's concern was that the subject could try to escape out of the rear of the house and he was focused on ensuring the safety of the other two officers.

While he was standing there, the Complainant exited the rear of his home. NE#1 said that he identified himself as a police officer and told the Complainant that he was being audio and video recorded. NE#1 reported that he told the Complainant that they were at his home to make sure that the subject was not there. NE#1 said that the Complainant began closing a shed door and locking other items up. NE#1 told the Complainant that they were not there to search his property and had no legal authority to enter his home at that time. NE#1 stated that the Complainant then went back into his house.

The Complainant came out a second time and, according to NE#1, asked NE#1 why he could not go back to the front with the other officers. NE#1 explained that there were safety considerations involved. The Complainant asked him what his legal authority to be there was and NE#1 again responded that he was not there to search the property or home. NE#1 described the Complainant as appearing aggravated at that time. The officers left shortly thereafter. NE#1 thought he gave the Complainant his business card, but was not sure.

The audio of NE#1's interaction with the Complainant was largely captured by In-Car Video (ICV). The ICV reflected that NE#1 and the Complainant had a substantive conversation concerning why NE#1 was standing where he was. It further indicated that NE#1 told the Complainant multiple times that he was not going to conduct any searches and that he had no authority to do so. The ICV was largely consistent with NE#1's recounting of the interaction.

SPD Policy 5.001-POL-9 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-9.)

Based on my review of the ICV, I find insufficient evidence to support a finding that NE#1 was unprofessional in his interaction with the Complainant. First, the ICV reflects that NE#1 did respond to the Complainant when he was asked why he was standing near the Complainant's backyard. This is contrary to the Complainant's contention that NE#1 simply said "no" when he asked NE#1 to go the front of the home. Second, the ICV also indicates that NE#1 did attempt to explain why he was standing where he was several times, as well as that NE#1 tried to reassure the Complainant that he was not there to search the backyard or the house and that he would be leaving as soon as they verified that the subject was not there. This is contrary to the Complainant's assertion that NE#1 would not explain why he was there.

I see no evidence from the ICV that NE#1 was rude or dismissive of the Complainant's concerns. Indeed, I find the opposite. While the Complainant may have been aggravated by NE#1's presence, this does not establish that NE#1 was unprofessional in violation of SPD policy. As such, I recommend that this allegation be Not Sustained – Unfounded.



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

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

***6.180 - Searches-General 2. There are Specific Exceptions to the Search Warrant Requirement***

OPA construed the Complainant's complaint as also alleging that NE#1 accessed his backyard without legal authority to do so, implicating SPD Policy 6.180-POL-2.

As discussed above, the Complainant told OPA that NE#1 entered his "backyard" through the carport; however, the Complainant did not define exactly what area he was referring to as his backyard. As such, it is unclear whether the Complainant was including the deep driveway area described by NE#1.

At his OPA interview, NE#1 explained that he was in a deep driveway area, but did not enter the Complainant's backyard. He further stated that he did not have to go through a fence to get where he was situated and that he was not in an enclosed area. He stated that, while he was approximately 20 to 30 feet from the sidewalk in front of the home, he never went into the backyard and stayed by the back gate. NE#1 showed the OPA investigator assigned to this case where he was by using Google Street View images as a guide.

SPD Policy 6.180 generally sets forth the elements for searches effectuated by SPD employees and the requirement that search warrants are required. SPD Policy 6.180-POL-2 describes the exceptions to the search warrant requirement, one of which is "open view." Open view occurs when an officer makes an observation from a place that the officer is permitted to be in and that is outside of any constitutionally protected location. As such, the relevant question here was whether the area that NE#1 was standing in was an area that he was permitted to be in or whether it was a constitutionally protected location that was off-limits to him.

I read the Complainant's allegation as contending that NE#1 was in his "backyard," which was enclosed by a fence. Under the totality of the circumstances, I believe that the immediate backyard of the Complainant's residence would have been the curtilage of the home. As such, it would have been constitutionally protected from entry by NE#1 and was not a permissible place for him to be in. If, however, NE#1 was standing in a deep driveway area and did not enter the fenced off area, he likely would not have been in an impermissible location as I do not believe that the driveway constituted curtilage given that it was a non-enclosed area that opened up onto a public roadway.

Ultimately, based on the facts in the record, I cannot conclusively determine where NE#1 was situated during the incident. Accordingly, I cannot determine whether he was in a permissible place or not and whether his actions were consistent with policy. For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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