



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 3, 2018

CASE NUMBER: 2018OPA-0192

Allegations of Misconduct & 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 (Unfounded)

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)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	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:

The Complainant alleged that the DUI stop and arrest of the subject was premised on bias. OPA also added an allegation that Named Employee #3 failed to take appropriate steps to assist the Complainant in filing an OPA complaint.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

Named Employee #1 (NE#1) conducted a traffic stop of the subject’s vehicle based on the fact that the vehicle’s rear lights were either not on or were not functional. At the time of the stop, the subject was accompanied by a female passenger. The passenger is the Complainant in this matter. When NE#1 approached the vehicle, the subject asked why he had been stopped. NE#1 informed the subject of the basis for the stop and the subject responded that his vehicle was new and that he believed that the lights came on automatically. NE#1 observed, however, that the vehicle lights were in the off position and, when he notified the subject of this fact, the subject turned his lights on.



NE#1 then asked for his license, registration, and proof of insurance. He provided his license and proof of insurance and began looking for his registration. At that time, NE#1 asserted that he could smell alcohol emanating from the vehicle. NE#1 then asked the subject to turn off his vehicle and step outside. When the subject did so, NE#1 continued to smell the odor of alcohol. NE#1 reported that he asked the subject what he had been doing that evening and the subject stated that he had been at a friend's house. NE#1 further reported that he asked whether the subject had been drinking. NE#1 wrote in his General Offense Report that the subject acknowledged that he had been and admitted consuming between five to six drinks. NE#1 indicated in his report that when he asked the subject what his intoxication level was from one to ten (ten being the highest), the subject responded that he was at a three and a half. NE#1 further recounted that when he asked the subject at what level of intoxication would he be unsafe to drive, he stated six.

NE#1 asked the subject if he would perform voluntary Field Sobriety Tests (FSTs) and the subject agreed to do so. NE#1 reported that the subject showed clues of impairment when performing each of the FSTs. Accordingly, he made the decision to place the subject under arrest for DUI. Named Employee #2 (NE#2) arrived on the scene to provide back-up for NE#1. He began interacting with the Complainant. During this conversation, the Complainant asserted to NE#2 that the vehicle stop and the subject's arrest were due to his race. The subject is African-American. The Complainant additionally told the officers that she worked for the King County Prosecuting Attorney's Office and that, due to her experience dealing with these types of cases, she did not believe that there was a basis for the stop or arrest. She further complained that the subject was rushed into the DUI investigation and that she did not have the opportunity to offer him legal advice. While not germane to my findings, I note that I find it concerning that the Complainant, who self-identified multiple times as an employee of a prosecutor's office, contended that she had a right to provide legal advice to the subject and argued with the officers concerning the legal justification for the stop, investigation, and arrest. While perhaps not her intention, this could be viewed as improperly using her influence and position to sway a criminal investigation and, at the very least, has the appearance of impropriety.

The Complainant was transported to the precinct where, after consulting with an attorney, he took a Blood Alcohol Content (BAC) breath test twice. His BAC level was 0.065 and 0.064, respectively. He was cited and released with a hearing date. The Complainant's allegation of biased policing was relayed to Named Employee #3 (NE#3), who was the officers' supervisor. As discussed below, he did not initiate an OPA complaint based on her allegation or, for that matter, provide her with OPA's contact information.

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 as other discernible personal characteristics of an individual." (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (*See id.*) The policy describes when an allegation of biased policing occurs, explaining that: "an allegation of bias-based policing occurs whenever, from the perspective of a reasonable officer, a subject complains that he or she has received different treatment from an officer because of any discernible personal characteristic..." (*Id.*)

At their OPA interviews, both of the Named Employees denied engaging in biased policing in this instance. NE#1 explained that he did not know the subject's race prior to the stop. He contended that he initially effectuated the stop for a lawful reason and that he asked the subject out of the car because he smelled of alcohol, not because the subject was African-American. Moreover, NE#1 stated that treated this stop just like he would have treated any other potential DUI. He concluded that he did not approach this stop differently because of the subject's race. NE#2 also stated that the subject's race had nothing to do with the way he and NE#1 approached the call. NE#2 noted that



he was “of African descent” and that he was “just as dark as they get,” and, as such, he did not engage in biased policing towards the subject (while he did not raise this issue at his OPA interview, NE#1 is also Black).

Based on my review of the record, I find insufficient evidence to establish biased policing. I conclude that the officers had reasonable suspicion to effectuate the initial traffic stop and then again had reasonable suspicion to believe that the subject was DUI. When the subject failed the FSTs, there was probable cause to place him under arrest. I find that the facts that comprised the officers’ investigation, not the subject’s race, was the basis for his stop and arrest. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - 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 #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint

As noted in the OPA’s Auditor’s certification memo, there is some confusion concerning the allegation that was ultimately classified against NE#3. The Auditor is correct that OPA initially intended to investigate whether NE#1 failed to refer a non-activation of BWV to OPA. However, for a reason that I cannot readily discern, instead of investigating NE#3 under SPD Policy 5.002-POL-5, which concerns a supervisor’s obligation to investigate or refer misconduct, OPA instead classified SPD Policy 5.002-POL-2, which sets forth the responsibility of SPD employees to assist any person who wishes to file a complaint. This appears to have been an error by the OPA employee assigned to classify this matter. That being said, this policy, which is discussed below, is equally applicable to NE#3’s conduct in this instance.

NE#3 contended that he did not violate this policy as the Complainant did not, in fact, wish to make a complaint. The BWV captured her saying that she believed that a complaint would not go anywhere, but she also asked whether she would be listed as the “complainant” and NE#3 said that she would. As such, it appeared to me that she believed that some formal complaint was being filed on her behalf. However, no such complaint was ever filed by NE#3 and he failed to provide her with OPA’s contact information. Perhaps this was simply a miscommunication; however, NE#3 should have provided this information to the Complainant or, in the alternative, should have actually filed an OPA complaint on her behalf.

Moreover, in failing to file an OPA complaint on her behalf or to give her OPA’s contact information, NE#3 also technically violated the versions of SPD Policies 5.140-POL-6 and 7 that were in effect on the date in question. These policies allowed for a supervisor to complete a bias review if, after conducting a preliminary investigation, the supervisor believed that no misconduct occurred *and* if the supervisor was able to resolve the bias complaint to the



satisfaction of the complainant. This policy has since been changed to eliminate the “satisfaction of the complainant” standard and to, instead, require that the officer affirmatively provide OPA’s contact information, to determine whether the complainant wants to make an OPA complaint, and, if so, to assist the complainant in doing so. However, this updated policy was not applicable during this incident and the prior policy controls.

Here, NE#3 completed a bias review even though the BWV and his own report indicated that the Complainant was not satisfied. Moreover, NE#3 did not provide the Complainant with OPA’s contact information at the time. He did not do so until after that date, when he later texted the information to the Complainant. Ultimately, NE#3 was counseled concerning his failure to provide this information to the Complainant on the date of the incident and for inappropriately completing a bias review in this case. While I find that he did not properly comply with this policy, OPA has recognized that there was ambiguity between the plain language of the policy and how Department supervisors were being trained. This was the impetus for OPA’s Management Action Recommendation in this area that resulted in the modification discussed above.

Ultimately, while I find that NE#3’s actions technically violated multiple policies, I recommend that he receive a Training Referral based on the possible confusion regarding whether the Complainant wanted to file an OPA complaint, the discrepancies between the bias review policies and the training provided to sergeants, and the fact that NE#3 has already been counseled by his chain of command concerning this matter.

- **Training Referral:** To the extent NE#3’s chain of command has not already addressed all of the issues in this DCM with him, it should do so. Moreover, NE#3’s chain should ensure that he understands the new requirements under the revised bias review policies. This counseling and any associated training should be documented and this documentation should be maintained in an appropriate database.

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