



## CLOSED CASE SUMMARY

ISSUED DATE: JUNE 25, 2019

CASE NUMBER: 2019OPA-0026

### 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)
# 2	6.180 - Searches-General e. Search Incident-to-Arrest / Custodial Search	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 Named Employees stopped her because she is transgender. The Complainant further alleged that Named Employee #2 failed to follow policy when he searched the Complainant without calling for and waiting for a female officer to arrive on scene to perform the search.

**ADMINISTRATIVE NOTE:**

This case was designated as an Expedited Investigation. This means that OPA, with the Office of Inspector General’s review and approval, believed that it could reach and issue recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, the Named Employees were not interviewed as part of this case.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

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

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) entered the private parking garage at 714 1st Avenue, which has three posted no trespassing signs at the entrance. The officers reported that they often check this garage due to the large number of property crimes that are reported at the location. While inside the garage, the officers located the Complainant, who did not appear to be associated with any of the cars in the garage and had several bags with her.



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NE#1 and NE#2 explained to the Complainant that they approached her because she was trespassing. After the officers conducted an investigation concerning the Complainant's presence in the garage, the Complainant was arrested. The Complainant was searched incident to her arrest. That search was performed by NE#2.

OPA attempted to interview the Complainant directly, as well as through her attorney, but those attempts were unsuccessful. As such, the Complainant was not interviewed by OPA as part of this investigation. However, the Complainant provided a recorded statement to the Sergeant who screened the arrest and later made an OPA referral on her behalf. In her statement to the Sergeant, the Complainant stated that she did not believe that the officers singled her out, but that she thought the officers were later influenced negatively due to her being transgender. The Complainant asserted that the bias manifested itself in the officers asking probing questions, including what the Complainant's middle name is. The Complainant also stated that she felt uncomfortable and violated when NE#2 searched her, specifically since she requested to be searched by a female officer.

SPD Policy 5.140 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 other discernible personal characteristics of an individual."

OPA obtained and reviewed the Body Worn Video (BWV) associated with this incident. The BWV reflected the chain of events and interactions between NE#1, NE#2, and the Complainant. There is no evidence on the video that the Named Employees treated the Complainant any differently based on her being transgender. Moreover, asking probing questions is a necessary part of conducting an investigation and is appropriate to determine the identity of an arrestee. This does not, in and of itself, suggest bias on the Named Employees' part.

As I find that the Named Employees did not engage in biased policing, I recommend that this allegation be Not Sustained – Unfounded as against both of them.

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

**Named Employee #2 - Allegations #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 #2 - Allegation #2**

***6.180 - Searches-General e. Search Incident-to-Arrest / Custodial Search***

SPD Policy 6.180-POL-2(e) concerns searches of detainees. Relevant to this case, the policy discusses cross-gender searches. In this regard, the policy instructs that suspects will not be searched by officers of the opposite gender unless there is a reasonable likelihood that the suspect possesses a weapon or other object capable of causing injury or which could facilitate escape, or the officer believes that the suspect possesses objects which constitute evidence,



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which if not seized immediately could be destroyed, lost, or lose their value as evidence, and there is no officer of the same gender readily available to conduct the search.

Here, NE#2, a male officer, searched the Complainant, who identified as female. He did so without first calling for a female officer to conduct the search. While OPA confirmed that no female officers were available that evening, NE#2 was still required by policy to verify that before moving forward with the search. In addition, NE#2 did not document his basis to believe that there was a reasonable likelihood that the Complainant was armed or had evidence that could be destroyed or compromised, which would have justified a male officer conducting the search. Again, this was required even though the Complainant was, in fact, armed and possessed contraband at the time she was searched. Indeed, it is unclear from OPA's review of BWV whether NE#2 had a basis to believe that this was the case prior to the search being performed.

OPA recently issued a Management Action Recommendation advising the Department to modify SPD Policy 6.180-POL-2(e) and, specifically, the portion of the policy that concerns cross-gender searches. OPA recommended that, for a number of reasons, the Department permit a cross-gender search where a female officer cannot come to the scene to perform the search within a reasonable amount of time. If the policy is not modified, OPA remains concerned that, if explicitly followed, the policy will result in officers choosing to either conduct an impermissible cross-gender search or to place themselves and others in potentially dangerous situations.

The Department has not yet considered or effectuated the changes suggested by OPA and, as such, the current iteration of the policy remains in effect. Under this policy, NE#2 should have called for a female officer to conduct the search and, if no female officer was available, he should only have conducted the search if he could establish a reasonable likelihood that the Complainant was armed or had evidence that could be destroyed or compromised. As he did not appear satisfy either requirement here, I recommend that he receive the below Training Referral.

- **Training Referral:** NE#1 should be reminded that, until SPD Policy 6.180-POL-2(e) is modified, he must call for a female officer prior to conducting a cross-gender search and, if no female officer is available, he must establish a reasonable likelihood that the Complainant was armed or had evidence that could be destroyed or compromised in order to permissibly perform the search. NE#1 should also be reminded to document his belief of such a reasonable likelihood. This training and counseling should be documented, and this documentation should be maintained in an appropriate database.

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