



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0251

Issued Date: 09/27/2017

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 5.002 (2) Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Will Assist Any Person Who Wishes to File a Complaint (Policy that was issued January 1, 2015)
OPA Finding	Not Sustained (Training Referral)
Allegation #2	<u>Seattle Police Department Manual</u> 5.002 (4) Responsibilities of Employees Concerning Complaints of Possible Misconduct: Retaliation Is Prohibited (Policy that was issued January 1, 2015)
OPA Finding	Not Sustained (Unfounded)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 5.002 (2) Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Will Assist Any Person Who Wishes to File a Complaint (Policy that was issued January 1, 2015)
OPA Finding	Not Sustained (Training Referral)
Final Discipline	N/A

Named Employee #3	
Allegation #1	<u>Seattle Police Department Manual</u> 8.200 (1) Using Force: When Authorized (Policy that was issued 09/01/15)
OPA Finding	Not Sustained (Inconclusive)
Allegation #2	<u>Seattle Police Department Manual</u> 5.001 (6) Standards and Duties: Employees Engaged in Department-Related Activities Identify Themselves When Requested (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
Allegation #3	<u>Seattle Police Department Manual</u> 8.400 (1) Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force (Policy that was issued September 1, 2015)
OPA Finding	Not Sustained (Inconclusive)
Final Discipline	N/A

INCIDENT SYNOPSIS

Named Employee #1 encountered the complainant on two separate occasions. The complainant reported one of the encounters to Named Employee #2.

COMPLAINT

The complainant alleged that he was body-checked by an unknown SPD Bike Officer during a rally. On the same day, the complainant tried to report the assault by the Unknown Employee to Named Employee #1 who did not take his complaint. Two days later, while attending another gathering at the same location, he ran into Named Employee #1 who intimidated him and threatened him for the complaint he had made to him on the previous encounter. Following this encounter, the complainant also reported his assault to Named Employee #2 who did not provide him OPA's contact information and didn't forward the complaint to OPA.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint
2. Search for and review of all relevant records and other evidence
3. Review of 911 recordings
4. Interviews of SPD employees

ANALYSIS AND CONCLUSION

The complainant alleged that he was subjected to excessive force by an unknown Seattle Police Department (SPD) officer (identified herein as Named Employee #3) during a demonstration in which he was a participant. The OPA Director noted that, as discussed more fully below, the complainant initially claimed that force was used on him by both Named Employee #3 and Named Employee #1, but later changed his account.

The complainant stated that, after the force was used but while the demonstration continued, he told Named Employee #1 what had happened to him. The complainant alleged that Named Employee #1, who was on duty at that time, was dismissive and stated something to the extent of “too bad” or “tough luck.”

Named Employee #1 asserted that the complainant did not alert him to excessive force that was used by another officer. To the contrary, Named Employee #1 stated that the complainant alleged that Named Employee #1, himself, used force against the complainant, which Named Employee #1 asserted was a false accusation and which Named Employee #1 did not report.

SPD policy 5.002-POL-2 requires that employees who receive complaints of misconduct are required to report those complaints to a supervisor and/or OPA. The policy further indicates that “[i]f the complainant requests information on where and how to file the allegation, the employee will provide it.” This is particularly the case where the allegations, if believed, constitute serious misconduct, such as the use of excessive force.

From the complainant’s statement, it was unclear whether he ever requested information regarding how and where to file a complaint. If the complainant did not ask for the information, it was not a violation of policy for Named Employee #1 to not provide it. However, even if the complainant did not ask for information concerning filing a complaint, under Named Employee #1’s recounting of events, he still indicated to Named Employee #1 his belief that Named Employee #1 had “assaulted” him. In doing so the complainant alleged that Named Employee #1 committed a policy violation and Named Employee #1 was thus required to report that allegation to a supervisor and/or OPA. Here, Named Employee #1 did neither. In explaining why he did not do so, Named Employee #1 stated: “I wasn’t concerned that it was a legitimate complaint and no, I hadn’t assaulted anybody so I wasn’t concerned about it.” The OPA Director did not read the policy to provide an exception from reporting either when the alleged misconduct is frivolous or when the allegation is made against the officer, himself.

The OPA Director noted that Named Employee #1 did not contend that he was too busy with his duties at the demonstration to report the misconduct, which is an exception to the policy. Even were that the case, he would have been required to instead “provide specific information to the complainant on where and how to file the allegation.” Named Employee #1 did not do this, so the exception did not apply. Moreover, it would have been simple for Named Employee #1, after his conversation with the complainant and before the end of his shift, to simply inform

Named Employee #2 or another supervisor of the interaction and the allegations that were made against him.

In this case the OPA Director was ultimately faced with a difficult question: is an officer required to self-report an allegation of misconduct that he knows is frivolous and never occurred? Based on his reading of the policy, that was what was required. Here, the OPA Director found such a result unreasonable. For this reason, and based on the unique circumstances of this case, the OPA Director could not recommend sustaining this allegation against Named Employee #1.

The complainant initially reported to OPA that he had been subjected to excessive force by officers including Named Employee #1. At the time that this statement was made, the complainant knew that his allegation was inaccurate. Named Employee #1 received a notice of that complaint from OPA on that same day.

On the following day, Named Employee #1 again interacted with the complainant. The complainant alleged that Named Employee #1 told him, “there will be repercussions for filing false claims against the police” and asserted that he felt threatened by that statement. Named Employee #1 stated that he told the complainant the following: “any repercussions that occur from this are on you because of making a malicious complaint. When it’s proven that I obviously had nothing to do with it and you’re fully aware of that, you probably wanna correct your statements.” Named Employee #1 explained that when he used the term “repercussions,” he was referring to the legal ramifications of making a false complaint. Named Employee #1 also asserted that he did not intend to threaten or intimidate the complainant by making this statement. While the OPA Director credited Named Employee #1’s statements at his OPA interview, he noted that Named Employee #1 made the conscious choice to interact with someone that he knew had previously made a complaint against him, and, in doing so, used language that could have been interpreted as threatening.

The OPA Director would like to be clear at the outset that he did not conclude that Named Employee #1 intended to threaten or intimidate the complainant and did not find that Named Employee #1 necessarily violated policy. The OPA Director did believe, however, that the Named Employee exercised questionable judgment in this instance. The OPA Director had no doubt that being accused of misconduct can be stressful, frustrating and disheartening – particularly where the allegations do not have any factual basis. Moreover, he recognized that such allegations, even if ultimately deemed frivolous, could have a very real impact on an officer’s career. That being said, the wiser course of action here would have simply been to ignore the complainant or walk away. By not doing so, Named Employee #1 created a situation that had the appearance of impropriety, even if actual impropriety was not present here. Ultimately, police officers have the responsibility to avoid these types of situations where at all possible.

The complainant alleged that at a later demonstration, he reported to Named Employee #2 the prior use of force as well as the “threat” from Named Employee #1. The complainant stated that Named Employee #2 told him to file an OPA complaint, but did not actually direct him to OPA or initiate the complaint on his behalf. Four days later, OPA emailed a notice of complaint to Named Employee #2. That afternoon, Named Employee #2 called OPA and indicated that he had spoken to a sergeant investigator that same morning- prior to receiving the notice- regarding the complainant’s allegations. In a later email to OPA, Named E#2 repeated that assertion and further stated that when he returned to the precinct on the date in question, he memorialized the complainant’s allegations in writing. He stated that he then intended to send an email containing the allegations to OPA three days later. However, Named Employee #2 was out sick on that day. On his next day of work, Named Employee #2 called OPA and indicated that he would be sending the email with the allegations. He did not do so prior to receiving the notice of complaint.

SPD policy 5.002-POL-2 requires that employees who receive complaints of misconduct are required to report those complaints to a supervisor and/or OPA. The policy further indicates that “[i]f the complainant requests information on where and how to file the allegation, the employee will provide it.” (SPD Policy 5.002-POL-2.) This is particularly the case where the allegations, if believed, constitute serious misconduct, such as retaliation and the use of excessive force.

Here, it appeared that Named Employee #2 did report the allegations to OPA, even if not until several days after the incident. Delays in reporting by supervisors can be very problematic as they can impact the collectively bargained investigation timeline requirements. If discipline cannot be imposed based on a failure to report by an SPD employee, it has a significant effect on the efficacy of the accountability system and lessens the public’s perception of the system’s legitimacy.

Named Employee #2 should have reported the complainant’s allegations to OPA as soon as he returned to the precinct on the date in question. The OPA Director did not believe that Named Employee #2 was acting in bad faith when he delayed reporting and found that Named Employee #2 did, in fact, report prior to receiving a notice of complaint from OPA. However, the OPA Director concluded that Named Employee #2 should be required to receive additional training on SPD policy 5.002.

In the complainant’s initial communication with OPA concerning this matter, he stated that he had been assaulted by SPD officers and that Named Employee #1 was “one of them.” While never identified, presumably Named Employee #3 was the “other” involved officer. During its intake process, OPA obtained a recorded statement from the complainant. During that statement, the complainant indicated that he was assaulted by only one unidentified masked officer and not also by Named Employee #1. The complainant now asserted that he reported his assault by Named Employee #3 to Named Employee #1 and that Named Employee #1 was dismissive of his complaint.

The complainant was never able to provide a detailed description of Named Employee #3, aside from that he was a Caucasian male wearing a mask and black tactical gear. During its investigation, OPA attempted to determine the identification of Named Employee #3. OPA looked for video of the protest and the alleged assault from businesses in the near vicinity and on the internet but was unsuccessful. Named Employee #1 was asked whether he observed any assault, but indicated that he did not. Lastly, OPA reached out to the complainant for possible additional identifying information, but the complainant did not respond to or return these follow-up telephone calls.

In evaluating the merits of this allegation, the OPA Director had doubts as to the complainant's credibility due to the changing of his story over time. The OPA Director found it particularly concerning that he initially identified Named Employee #1 as one of the perpetrators of the force when he knew that Named Employee #1 was not involved.

It may very well have been the case that even if Named Employee #3 did use force against the complainant and the force was as the complainant described it, the force was still within policy. Ultimately, Named Employee #3 was never located and the OPA Director could not conclusively determine whether the force ever occurred, let alone whether it took place as the complainant described.

As with the above allegation, aside from the complainant's statements, there was no evidence that this incident ever occurred, or, at the very least, occurred as described by the complainant. If the complainant was involved in an altercation with an officer, asked that officer to identify himself, and the officer refused to do so, that would constitute a violation of SPD policy. However, the OPA Director could not conclusively determine that this incident took place.

Even if the force occurred as the complainant described, it was unclear whether it would have had needed to be reported. The complainant alleged that an officer "body checked" the complainant with "as much force as he could muster." At the time he was "body checked," the complainant alleged that the officer yelled something like "get back." The complainant did not report that he was knocked backwards or fell to the ground. The complainant was further unclear as to whether he suffered or complained of any pain from the force. The complainant did state, however, that he suffered "emotional injuries" and that he was so worried for his physical health and safety that he made funeral arrangements for himself for the following day.

Again, as with the remainder of the allegations against Named Employee #3, the OPA Director could not conclusively determine whether this incident occurred or what actually happened.

FINDINGS

Named Employee #1

Allegation #1

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Will Assist Any Person Who Wishes to File a Complaint*.

Recommended Training: Named Employee #1 should be retrained on the requirements of SPD policy 5.002 and, specifically, the reporting obligations set forth in SPD policy 5.002-POL-2

Allegation #2

A preponderance of the evidence showed that Named Employee #1 had not intended to threaten or intimidate the complainant. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Responsibilities of Employees Concerning Complaints of Possible Misconduct: Retaliation Is Prohibited*.

Named Employee #2

Allegation #1

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Responsibilities of Employees Concerning Complaints of Possible Misconduct: Employees Will Assist Any Person Who Wishes to File a Complaint*.

Recommended Training: Named Employee #2 should be retrained on the requirements of SPD policy 5.002 and, specifically, the reporting obligations set forth in SPD policy 5.002-POL-2. NE#2 should receive further instruction on the Department's expectations concerning timely reporting of alleged misconduct.

Named Employee #3

Allegation #1

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Using Force: When Authorized*.

Allegation #2

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Standards and Duties: Employees Engaged in Department-Related Activities Identify Themselves When Requested*.

Allegation #3

There was not a preponderance of the evidence either supporting or refuting the allegation. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Use of Force Reporting and Investigation: Officers Shall Report All Uses of Force Except De Minimis Force*.

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.