



OFFICE OF POLICE ACCOUNTABILITY

Closed Case Summary

Complaint Number 2017OPA-0567

Issued Date: 01/26/2018

Named Employee #1	
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	No Discipline Imposed

Named Employee #2	
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	No Discipline Imposed
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INCIDENT SYNOPSIS

The Named Employees responded to a call for service at a community center and contacted the complainant.

COMPLAINT

The complainant alleged that two Named Employees harassed him because he was homeless. OPA review of the In-Car Video (ICV) from the incident showed that the complainant did make a general statement about 'harassing the homeless' and the Named Employees did not address it as a complaint of bias.

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 In-Car Videos (ICV)
4. Interviews of SPD employees

ANALYSIS AND CONCLUSION

The complainant alleged that the Named Employees took law enforcement action against him based on his housing status. As such, the complainant asserted that the Named Employees engaged in biased policing.

On the date in question, the Named Employees responded to a call for service from the Seattle Parks and Recreation Department (Parks). Once the officers arrived at the scene, which was a community center, they were informed by Parks personnel that the complainant, after being told to leave the vicinity, had begun banging on windows. One of the Parks personnel indicated to the Named Employees that while she wanted the complainant to be trespassed and to leave the location, she was not requesting that he be arrested.

The Named Employees contacted the complainant. While not captured on video, the audio of the officers' discussion with the complainant was clearly recorded on ICV. The officers indicated to the complainant that he needed to leave the area. As discussed more fully below, during this conversation, the complainant alleged that he was only being harassed because he was homeless. The Named Employees continued to engage with the complainant for a short period of time. At that point, the Named Employees also left the scene. The Named Employees did not

arrest or use force against the complainant and, aside from their conversation with him, took no law enforcement action.

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 other discernible personal characteristics of an individual.” (SPD Policy 5.140.) This includes different treatment based on the race of the subject. (See *id.*)

Here, from the OPA Director’s review of the record, he found no evidence suggesting that the Named Employees’ actions were motivated by bias. The Named Employees’ actions were based on the call for service they received, not on the fact that the complainant was experiencing homelessness. Undoubtedly, the complainant’s housing status was a factor in why he was in the vicinity of the community center to begin with and why he ultimately came into contact with the officers. However, his conduct, including banging on windows, was the impetus behind the action that the Named Employees ultimately took, not his housing status.

While the OPA Director did not find that the Named Employees engaged in biased policing, he found that they both failed to report the complainant’s statement that he was being treated differently because of his housing status. While not captured on video, the audio of the complainant’s conversation with the Named Employees was recorded. The complainant stated to the officers: “if you want to harass the homeless, harass the homeless. Go to town.” In response, one of the Named Employees stated, “we don’t harass people, we’re too busy for that.” The complainant made further comments concerning how he felt homeless people were treated, including stating “sieg heil,” in a reference to his apparent belief that the Named Employees’ behavior was authoritarian. One of the Named Employees then told him to “take it easy,” before leaving the scene.

At their OPA interviews, both Named Employees recognized that housing status was a protected characteristic under the Department’s bias-free policing policy and both understood that they were not permitted to take law enforcement action against someone solely due to that person’s housing status. Accordingly, both Named Employees were aware that if a person alleged that law enforcement action was being taken because of that person’s housing status, such a complaint would need to be reported to a supervisor. When asked about the complainant’s comments at their OPA interviews, both Named Employee #1 and Named Employee #2 stated that they did not recall the complainant making an allegation of bias and, as such, no such allegation was reported to a supervisor. (See NE#1 OPA Interview, at p. 3; see also NE#2 OPA Interview, at p. 3.) When the audio of their interaction with the complainant was played at the Named Employees’ OPA interviews, both officers stated their belief that the complainant’s comment did not rise to the level of a bias complaint. (NE#1 OPA Interview, at pp. 4-5; NE#2 OPA Interview, at p. 4.) As explained below, the OPA Director disagreed.

The OPA Director found that a reasonable officer would have concluded that the complainant alleged that he was being harassed and that law enforcement action was being taken against him because of his housing status. Had the complainant alleged that he was being harassed

because he belonged to a specific racial or ethnic group, the OPA Director did not think that there would have been any dispute that it was an allegation of biased policing that the officers would have been required to report to a supervisor. The Director saw no reason why the result should be any different when the protected characteristic was housing status.

Lastly, even were this a close call, all the officers had to do was to notify a supervisor of the complainant's comment and ask that supervisor to come to the scene. This would have fulfilled their obligation under the policy. It is incredibly important that bias allegations are reported and critically examined by a supervisor, even if they may ultimately have no merit. Doing so builds community trust in the Department and makes it abundantly clear that the Department is committed to identifying, investigating and rooting out bias wherever and whenever it occurs.

For these reasons, the OPA Director found that the Named Employees' failure to report the complainant's comment to a supervisor was inconsistent with SPD policy.

With regard to Named Employee #2's specific actions during this incident, the OPA Director noted that while professionalism was not classified in this case and while it was not found that Named Employee #2's conduct would have necessarily violated SPD's policy in this regard, there were some concerns with his interaction with the complainant. First, by telling the complainant that officers were too busy to harass people, it suggested that were the officers not too busy they would be harassing people. This is not the message that the Department should be sending. Second, at one point, the complainant discussed with the Named Employees that while officers respond to calls concerning his conduct, they do not respond to other calls, such as when dogs are in the park. Named Employee #2 responded: "we don't just ignore 911 calls, bro. We go and handle our shit." (NE#1 and NE#2 ICV, at 04:55:20 – 04:55:56.) This profanity was gratuitous and unnecessary and this simply is not the way that a Seattle police officer should be speaking to a community member. The OPA Director advised that Named Employee #2 attempt to take a different and more professional approach in the future.

FINDINGS

Named Employees #1 and #2

Allegation #1

A preponderance of the evidence showed that the Named Employees' actions were based on the call for service they received, not on the fact that the complainant was experiencing homelessness. 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 the Named Employees' failure to report the complainant's comment to a supervisor was inconsistent with SPD 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: No Discipline Imposed

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.