



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 10, 2018

CASE NUMBER: 2017OPA-1108

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)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Management Action)
# 3	5.140 - Bias-Free Policing 6. Employees Will Document All Allegations of Bias-Based Policing	Not Sustained (Management Action)
# 4	5.140 - Bias-Free Policing 7. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing	Not Sustained (Management Action)

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:

Various Bias Reviews conducted by supervisors may not have conformed to SPD policy in that the supervisors failed to resolve the matter to the satisfaction of the complainant prior to completing the Bias Review. This case is one of eight reviewed by OPA in order to evaluate and recommend changes to SPD Policy 5.140.

ADMINISTRATIVE NOTE:

This case, as well as seven other cases, were classified for investigation in order for OPA to issue a Management Action Recommendation relating to supervisor completion of Bias Reviews. These cases were not referred to OPA through an external or internal complaint, but were instead initiated by OPA. These eight cases were designated as expedited investigations. In this context, this means that it was agreed that OPA would conduct a limited investigation of this case, including not engaging in interviews. Underlying this decision was OPA's determination that, based on the objective facts, there was no bias on the part of SPD employees in any of these incidents.

As a result, OPA issued a Management Action Recommendation making proposed changes to the policy governing Bias Reviews. This Management Action Recommendation, which is referred to below, is included in OPA's case file and was transmitted to the Chief of Police on January 10, 2018.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The subject was identified as the primary aggressor in an assault and was placed under arrest. The subject later complained that he was only arrested because of his race. A sergeant responded to the scene and spoke with the subject. The subject again alleged that his arrest was based on his race. He further indicated that, during his arrest, an officer said: "stop resisting nigger." I note that this epithet did not appear on the video of the incident.

The sergeant attempted to interview the subject concerning his bias complaint; however, the subject would not discuss it and instead repeatedly told the sergeant to go back and arrest the victim. As such, the sergeant was unable to resolve this matter to the complainant's satisfaction. However, the sergeant still completed a Bias Review.

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.*) SPD employees are required to "call a supervisor in response to allegations of bias-based policing." (SPD Policy 5.140-POL-5.) The supervisor must be called to the scene. (*Id.*) This section of the policy provides guidance as to 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 discernable personal characteristic..." (*Id.*)

Based on a review of the objective evidence in this case, there is no indication that any SPD employee engaged in biased policing. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation

I refer to the Management Action Recommendation concerning Bias Reviews and SPD Policy 5.140, which was issued on January 10, 2018. This Management Action Recommendation is included in the case file.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #1 - Allegation #3

5.140 - Bias-Free Policing 6. Employees Will Document All Allegations of Bias-Based Policing

I refer to the Management Action Recommendation concerning Bias Reviews and SPD Policy 5.140, which was issued on January 10, 2018. This Management Action Recommendation is included in the case file.

Recommended Finding: **Not Sustained (Management Action)**



Named Employee #1 - Allegation #4

5.140 - Bias-Free Policing 7. Supervisors Conduct Preliminary Inquiry into Bias-Based Policing

I refer to the Management Action Recommendation concerning Bias Reviews and SPD Policy 5.140, which was issued on January 10, 2018. This Management Action Recommendation is included in the case file.

Recommended Finding: **Not Sustained (Management Action)**



City of Seattle

Office of Police Accountability

January 10, 2018

Interim Chief Carmen Best
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION REGARDING BIAS REVIEWS

Dear Chief Best:

I write to provide a Management Action Recommendation primarily concerning SPD Policy 5.140. Specifically, this Management Action Recommendation addresses Bias Reviews and the concern that, in some cases, such reviews are being completed contrary to policy.

This Management Action Recommendation relates to eight OPA cases: 2017OPA-0938; 2017OPA-1014; 2017OPA-1016; 2017OPA-1017; 2017OPA-1018; 2017OPA-1077; 2017OPA-1079; and 2017OPA-1108.

A. SPD's Biased Policing Policy and Bias Reviews

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." (SPD Policy 5.140.)

When a subject alleges biased policing, the officer to whom the allegation is made is required to "call a supervisor to the scene to review the circumstances and determine an appropriate course of action." (SPD Policy 5.140-POL-5.) The supervisor, in turn, is tasked with conducting a preliminary investigation and, as a result of that investigation, is required to complete either a Complaint Blue Team Entry (referred to herein as a Complaint Entry) or a Bias Review Blue Team Entry (referred to herein as a Bias Review).

SPD policy sets forth the circumstances in which it is appropriate to complete a Bias Review. In all other situations, the supervisor is required to generate a Complaint Entry and forward that complaint to OPA.

With regard to Bias Reviews, supervisors are instructed to complete this report "to document the circumstances of the allegation and steps that were taken to resolve it." (SPD Policy 5.140-POL-6.) SPD Policy 5.140-POL-6 sets forth the information that the sergeant must include in the Bias Review. (*Id.*) The policy also instructs that a Bias Review is *only* to be completed when two factors can be met: first, "the supervisor believes that the matter has been resolved to the satisfaction of the person making the allegation"; and, second, "the supervisor believes that no misconduct was involved." (*Id.*)

The policy further outlines the expectations for the screening of the bias policing allegation by the sergeant. If the complainant wants to speak to the sergeant, the sergeant is required to do so. (SPD Policy 5.140-POL-7.) If the complainant has left the scene prior to the sergeant's arrival, the sergeant is required to try to contact the complainant by phone or letter. (*Id.*) The sergeant is required to inform the complainant of the option of filing an OPA complaint. (*Id.*) SPD Policy 5.140-PRO-1(5) instructs that supervisors should provide "specific information to the person on how to file a complaint or, if warranted, refer[] the matter

to OPA for further investigation.” If the complainant wishes to proceed with an OPA complaint, the sergeant is required to complete a Complaint Entry. (SPD Policy 5.140-POL-7.) The sergeant is also required to complete a Complaint Entry if it is determined that potential misconduct occurred during the screening of the incident. (*Id.*) This portion of the policy again reiterates that “Bias Review Blue Team entries are only used when the supervisor believes that no misconduct occurred and that the matter has been resolved to the satisfaction of the complainant.” (*Id.*) Lastly, the next level supervisor is responsible for reviewing the Bias Review and forwarding that Bias Review to OPA. (SPD Policy 5.140-PRO-1(8).)

The Bias Review Template contains ten fields that need to be completed by the sergeant. Included among those fields are: (4) “what was the subject’s complaint”; (5) “what actions did you take to resolve the matter to the satisfaction of the complainant”; and (6) “was the subject provided with OPA contact information.” In its instructions, the Bias Review Template instructs officers that “A *Bias Review* is used when a *Bias Policing* allegation is made and no misconduct is identified. If misconduct is identified, **DO NOT** use the Bias Review Blue Team entry. Instead, enter an OPA Complaint in Blue Team and route it through your Chain of Command.”

B. The Purpose and Benefit of Bias Reviews

Bias Reviews should be encouraged by the Department and, for that matter, by OPA. Bias Reviews serve a number of purposes. They require sergeants to conduct investigations into allegations of misconduct, which empowers them to truly supervise and be responsible for their officers, thus strengthening the Department’s internal accountability.

They further facilitate a mechanism for multi-layered review of allegations of bias – by the sergeant, by the chain of command, by OPA, and then by the OPA Auditor – prior to completion of the investigation. All of these actors are able to evaluate the thoroughness and objectivity of the review and ensure that it was done critically and in compliance with policy.

Bias Reviews also require an in-person interaction between sergeants and those complaining of biased policing. In this respect, they create largely positive interactions between complainants and the police where sergeants are given the opportunity to address, in real time, concerns that, even if not ultimately warranted based on the facts, may feel very real to the complainants. It also helps bridge the divide between the community and the police by not only helping community members understand why police officers may take certain law enforcement actions, but also by illuminating for sergeants and officers how certain law enforcement actions, even if they seem totally reasonable to officers, could negatively impact a community member.

C. The Flaws in the Bias Review Policy

While Bias Reviews have numerous benefits, it has become evident that there are several flaws in the policy.

First, there appears to be a conflict between SPD Policies 5.140-POL-6 – 7 and 5.002-POL-5. Specifically, SPD Policy 5.002-POL-5 instructs that “all allegations of serious policy violations will be referred to OPA for investigation.” Included among those serious policy violations are allegations of biased policing. (SPD Policy 5.002-POL-5.) This portion of the policy contains a reference to SPD Policies 5.140-POL-6 and 5.140-POL-7, but does not explicitly provide an exception from the general reporting requirement. As such, these policies

are in conflict. SPD Policy 5.140 requires that a supervisor, under certain circumstances, complete a Bias Review, which is not the immediate OPA referral mandated by SPD Policy 5.002, even though the Bias Review does go through OPA at a later stage.

Second, the policy's requirement that a Bias Review may only be completed when the sergeant can demonstrate that the matter has been resolved to the complainant's satisfaction has proven largely unworkable. This issue was initially flagged by both the former OPA Auditor and the current Interim OPA Auditor; however, the problems caused by the satisfaction of the complainant standard has also been recognized by both OPA and the Department.

In the cases reviewed by OPA, sergeants interviewed or attempted to interview the complainants consistent with policy, but the complainants either: refused to discuss the matter; made other statements that were not responsive to the sergeants' inquiries; had already left the scene; or were otherwise unable or unwilling to respond to the sergeants (for example, because the complainant was in crisis). Based on the responses or non-responses to their inquiries, the sergeants had not – and, in some cases, could not have – satisfied the complainants, which is a required element for completing a Bias Review. However, the sergeants simply provided OPA's contact information to the complainants and completed Bias Reviews anyway.

Examples of such cases are provided below:

- **2017OPA-0938**

While working off-duty, an officer observed a motorist hit a parked car twice when parallel parking. The officer approached the driver and asked her to leave a note on the vehicle that she had hit. While she agreed to do so, the driver was upset and accused the officer of engaging in biased policing.

The officer notified a sergeant who responded to the scene. The sergeant was unable to obtain a statement from the complainant. The sergeant noted: "The complaint [sic] left the scene before I arrived and subject did not provide contact information for me to follow up."

A Bias Review was completed even though the complainant had left the scene and the sergeant could thus not have determined whether the Complainant was satisfied with the resolution of this matter.

- **2017OPA-1014**

An officer responded to a report of two intoxicated patrons at a bar. After arriving at the scene, the officer was approached and grabbed by a female subject who scratched his arm. She was ultimately arrested. While the officer was placing her into the patrol vehicle, she stated: "are you doing this to me because I'm Asian? Don't be racist."

A sergeant was notified, came to the scene, and tried to interview the two subjects. However, the subjects would not respond to him.

Even though the sergeant could not obtain statements from the subjects and thus could not verify that this matter was resolved to the complainant's satisfaction, a Bias Review was completed.

- **2017OPA-1016**

Officers were dispatched to a suspected assault. The officers arrested the subject, who was identified as the primary aggressor. The subject alleged that he was only being arrested because he was African-American and that the officers were racist for believing the victim's account (who was also African-American).

When the sergeant arrived at the scene to discuss the bias complaint with the subject, the subject was uncooperative and would not provide any details. When the sergeant attempted to explain that he wanted to determine the nature of the subject's bias complaint, the subject responded: "it don't make no difference, anything you do would be racist too." Repeated attempts by the sergeant to interview the subject were unsuccessful.

The sergeant still completed a Bias Review even though the complainant had left the scene and the sergeant could thus not have determined that the Complainant was satisfied with the resolution of this matter.

- **2017OPA-1017**

Officers investigated an assault that was reported at the Torchlight Parade. The subject was identified as the primary aggressor and was placed under arrest. The suspect, who was African-American, stated that he was simply defending himself from the victim, who was white. The subject further stated that he was arrested because he was African-American and the victim was white. The subject lastly alleged that the officers purposefully failed to interview any African-American or Asian witnesses to the incident.

The responding sergeant attempted to interview both the subject and his wife, who again relayed their belief that the arrest was based on bias and that the officers had failed to interview non-white witnesses.

A Bias Review was completed even though there was no indication that this matter was resolved to the complainant's satisfaction.

- **2017OPA-1018**

Officers observed the subject, who matched the description of one of the perpetrators of a robbery. The officers detained the subject, and he was later positively identified by the victim during a show-up. The subject complained that the only reason he had been detained and arrested was because he was African-American.

A sergeant responded to the scene and interviewed the subject. The subject continued to assert that he was only subjected to law enforcement action because of his race and disputed the legal basis for his detention and arrest. He refused, however, to discuss his allegation of biased policing, telling the sergeant: "that's irrelevant, I don't give a fuck about that."

Based on the record, the subject did not indicate that he was satisfied; however, the sergeant completed a Bias Review regardless.

- **2017OPA-1077**

The subject was observed engaging in a number of narcotics transactions. She was placed under arrest. During her arrest, the subject stated that she was being racially profiled by a particular officer.

A sergeant responded to the scene, but the subject refused to discuss her allegation. The sergeant tried to speak with her again while she was being held at the precinct. At that time, she stated that a specific officer had been "harassing" and "gunning for" her. She did not explicitly allege bias at that time.

While there is no indication that the complainant was satisfied with the resolution of her complaint, a Bias Review was still completed.

- **2017OPA-1079**

Officers responded to a domestic violence call at the home of the subject and the subject's boyfriend. The subject's boyfriend reported that the subject had scratched him and this allegation was corroborated by observed injuries. Based on the requirement for mandatory arrests in domestic violence cases, the subject was placed into custody. At that time, the subject complained that he was being arrested because he and his boyfriend were "brown."

A sergeant interviewed the subject multiple times to determine why he believed that the officers were biased. The subject did not provide any further explanation.

There is no indication from the record that the subject was satisfied with the resolution of the complaint. However, the sergeant completed a Bias Review.

- **2017OPA-1108**

The subject was identified as the primary aggressor in an assault and was placed under arrest. The subject later complained that he was only arrested because of his race.

A sergeant responded to the scene and spoke with the subject. The subject again alleged that his arrest was based on his race. He further indicated that, during his arrest, an officer said: "stop resisting nigger." I note that this epithet did not appear on the video of the incident.

The sergeant attempted to interview the subject concerning his bias complaint; however, the subject would not discuss it and instead repeatedly told the sergeant to go back and arrest the victim. As such, the sergeant was unable to resolve this matter to the complainant's satisfaction. However, the sergeant still completed a Bias Review.

Even though Bias Reviews should not have been completed in these cases, I do not find that these sergeants willfully violated policy. To the contrary, based on my review, I found that the sergeants acted in accordance with training and guidance provided by the Department. The Department, in turn, provided

such training and guidance to the sergeants because of the issues presented by the overly subjective satisfaction of the complainant standard.

As part of its evaluation of Bias Reviews, OPA interviewed Assistant Chief of Patrol Steve Wilske. Assistant Chief Wilske also expressed concern with the subjectivity of the satisfaction of the complainant standard. Assistant Chief Wilske stated that the current iteration of the policy was putting the sergeants in the difficult place of having to guess at what a complainant believed or felt and was "leading to inconsistent products across the City and across the Precincts."

I agree with Assistant Chief Wilske that the satisfaction of the complainant standard is a difficult, if not impossible, standard to apply. The policy is silent as to how satisfaction is to be measured, or even as to what satisfaction means. Does the complainant need to affirmatively indicate that they understand the reason why they were stopped and that they do not believe that there was bias? What if the complainant is satisfied with the sergeant's explanation but still feels that there is bias? What if the complainant says nothing? What if the complainant walks away? What if the complainant is in crisis and cannot provide a rational response?

In recognition of the subjectivity of this standard and in order to ensure a more consistent approach and results, Assistant Chief Wilske explained that the Department made the decision to train sergeants to engage in a discussion with the complainant and, if that discussion did not resolve the complaint, to provide OPA's contact information. This training instructed sergeants that if they took those steps and if they believed that the bias allegation was without merit, a Bias Review was appropriate. Assistant Chief Wilske explained that sergeants "are to infer satisfaction if the person positively says, no, I don't want an OPA complaint or is unresponsive to that." This is the case even though the policy explicitly instructs that a Bias Review may not be completed unless the sergeant believes that the complainant is satisfied.

Based on the above, I believe that it is necessary to modify the policy governing Bias Reviews and, as such, I make the below Management Action Recommendation.

D. Management Action Recommendation

In reaching this Management Action Recommendations, OPA had two overarching priorities. First, Bias Reviews should continue to be completed as they are an important law enforcement tool, a mechanism for increasing accountability within the chain of command, and can serve to open lines of communication and build a bridge between the police and affected community members. Second, sergeants must be set up to succeed instead of being asked to comply with a virtually impossible policy or given training and guidance that, if utilized, would cause them to act contrary to the policy's explicit requirements.

Based on my review, I believe that the subjective satisfaction of the complainant standard is unworkable and I recommend that it be removed from the policy. The Department should thus modify the policy to instruct sergeants that a Bias Review is appropriate if two elements are met: (1) the sergeant believes that the allegation of bias is without merit; and (2) OPA's contact information has been offered and the complainant either did not wish to proceed with a complaint or did not respond.

Accordingly, OPA proposes the following changes to SPD Policies 5.002-POL-5, 5.140-POL-6 and 5.140-POL-7:

- SPD Policy 5.002-POL-5 should be modified to provide an exception from reporting an allegation of biased policing directly to OPA in those circumstances where a Bias Review is appropriate under SPD Policies 5.140-POL-6 and 5.140-POL-7.
- The order of SPD Policies 5-140-POL-6 and 5.140-POL-7 should be flipped.
- The first sentence of last paragraph of SPD Policy 5-140-POL-7 should be moved to the end of the third paragraph.
- The last paragraph of SPD Policy 5.140-POL-7 should be modified as follows:

Bias Review Blue Team entries should be used when, after the supervisor has conducted a preliminary investigation into the allegation of biased policing, the supervisor believes that: no misconduct occurred; and the supervisor has explained to the person making the allegation the option to refer the complaint to OPA, provides the person OPA's contact information, and the person either declines to file a complaint or provides no verbal response.
- The first paragraph of SPD Policy 5.140-POL-6 should be modified as follows:

If the use of a Bias Review Blue Team entry is permitted under the circumstances (see 5.140-POL-7), the investigating supervisor will complete the entry to document the circumstances of the allegations and steps that were taken to investigate and resolve it...
- The first sentence of the last paragraph of SPD Policy 5.140-POL-6 should be deleted.
- The Department should clearly state the expectations for the provisions of OPA's contact information to complainants. Specifically, SPD should reaffirm the importance of ensuring that complainants actually receive this information. Most notably, where complainants are reasonably believed to be experiencing homelessness, supervisors should endeavor to provide this information directly to the complainants, rather than, for example, mailing the information to a service provider, shelter or other temporary housing. The Department should also reaffirm in training the policy's requirement that supervisors provide specific information to complainants regarding how to file OPA complaints.

Thank you very much for your prompt attention to this matter of public trust and confidence in the professional conduct of SPD and its employees. Please inform me of your response to this recommendation and, should you decide to take action as a result, the progress of this action.

Please also feel free to contact me with any questions or concerns.

Sincerely,



Andrew Myerberg
Director, Office of Police Accountability