



## CLOSED CASE SUMMARY

ISSUED DATE:     APRIL 3, 2018

CASE NUMBER:    2017OPA-1154

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Inconclusive)
# 3	6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful	Not Sustained (Inconclusive)
# 4	6.220 - Voluntary Contacts, Terry Stops & Detentions 5. During all Terry Stops, Officers Will Take Reasonable Steps to Be Courteous and Professional, Including Identifying Themselves	Not Sustained (Inconclusive)
# 5	6.220 - Voluntary Contacts, Terry Stops & Detentions 8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if [...]	Not Sustained (Inconclusive)
# 6	6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops	Not Sustained (Inconclusive)

***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 an Unnamed Employee almost hit a pedestrian. The Complainant further alleged that when the pedestrian hit the top of the Unnamed Employee's vehicle, he started screaming at the pedestrian, got out of the vehicle, identified himself as an officer, displayed his badge, and told the pedestrian to get against the wall.

**STATEMENT OF FACTS:**

OPA received an allegation from the Complainant concerning a potential road rage incident involving a police officer. The Complainant stated that he observed a pedestrian crossing the street by a pedestrian bridge in the vicinity of the entrance to Century Link Field. He reported that a vehicle came to a stop near the crosswalk and almost struck the pedestrian. The Complainant recounted that the pedestrian slammed his hand down on the hood of the car and the front passenger got out of the vehicle and confronted the pedestrian. With regard to the front passenger, the Complainant stated that he was a male, provided a physical description, and indicated that the male was wearing a dark hooded sweatshirt. The Complainant described the vehicle as an older Ford sedan with a cracked windshield. The Complainant told OPA that the vehicle had no markings and no apparent emergency equipment. The Complainant stated that the driver was a woman, but he could not provide a physical description of her.



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The Complainant stated that the male pulled some sort of badge from his pocket and told the pedestrian that he was the “police.” The Complainant described the badge as round and silver but did not recount seeing any markings on it. Aside from the badge in his hand, the Complainant did not see any other police equipment on the male. The male then told the pedestrian to get against the wall. The Complainant told OPA that he observed the male perform a pat-down of the pedestrian. The Complainant stated that he heard the male state that he should “take [the pedestrian] to jail.” He described the male as looking around nervously at other pedestrians. The Complainant told OPA that the male then drove away from the scene. According to the Complainant, the stop and detention lasted approximately one minute. The pedestrian then walked away. The Complainant did not know the pedestrian and could not identify him or provide a physical description.

During its investigation, OPA conducted a search of the Department’s Record Management System to determine whether there were any reported incidents that matched the Complainant’s allegations. No records were found. In addition, OPA received no other complaints regarding this matter.

OPA conducted two further follow-up conversations with the Complainant to try to learn more information concerning this incident. OPA asked the Complainant if he could describe the buildings and other surroundings in the area of the incident. The Complainant later informed OPA that he reviewed the location using Google Maps, but that he could not pinpoint the location of occurrence. OPA also asked the Complainant whether he remembered observing any CCTV cameras in the vicinity of the incident and the Complainant stated that he did not recall.

Lastly, the OPA investigator assigned to this case did a walkthrough of the general area of the incident to determine whether there was a location that could be found that matched that described by the Complainant and whether there were any CCTV cameras that might have captured the incident. This search had negative results.

#### **ANALYSIS AND CONCLUSIONS:**

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

##### ***5.001 - Standards and Duties 5. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-5, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-5.)

If the situation described by the Complainant occurred and a SPD officer effectuated a Terry stop, pat-frisk, and detained the pedestrian against a wall, as well as threatened the pedestrian, this conduct would have been outside of policy, outside of the Department’s expectations of its officers’ conduct – whether the officer was on or off-duty, and would have constituted an abuse of the officer’s discretion.

However, as indicated above, OPA, despite its best efforts, could not determine when and where this incident occurred, who the male perpetrator was, and whether that individual was actually a police officer. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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



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**Named Employee #1 - Allegation #2**

***5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times***

SPD Policy 5.001-POL-9 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-9.)

The conduct described by the Complainant would have absolutely been unprofessional and contrary to Department policy. Again, as discussed above, OPA could not determine who the male perpetrator was and whether this individual was actually a police officer. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegation #3**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 1. Terry Stops are Seizures and Must Be Based on Reasonable Suspicion in Order to be Lawful***

SPD Policy 6.220-POL-1 stands for the proposition that Terry stops are seizures of an individual and, as such, must be based on reasonable suspicion in order to be lawful. SPD Policy defines a Terry stop as: “A brief, minimally invasive seizure of a suspect based upon articulable reasonable suspicion in order to investigate possible criminal activity.” (SPD Policy 6.220-POL-2(b).) SPD Policy further defines reasonable suspicion as: “Specific, objective, articulable facts, which, taken together with rational inferences, would create a well-founded suspicion that there is a substantial possibility that a subject has engaged, is engaging or is about to engage in criminal conduct.” (*Id.*) Whether a Terry stop is reasonable is determined by looking at “the totality of the circumstances, the officer’s training and experience, and what the officer knew before the stop.” (*Id.*) While “[i]nformation learned during the stop can lead to additional reasonable suspicion or probable cause that a crime has occurred, it “cannot provide the justification for the original stop.” (*Id.*) Lastly, officers are required to inform the detainee of the reason for the detention as early on in the contact as safety permits. (SPD Policy 6.220-POL-5.)

Based on the facts relayed by the Complainant, I do not believe that there would have been reasonable suspicion warranting the stop and detention of the pedestrian. As such, if an officer engaged in this conduct, it would have been in violation of policy. However, for the reasons articulated above, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegations #4**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 5. During all Terry Stops, Officers Will Take Reasonable Steps to Be Courteous and Professional, Including Identifying Themselves***

SPD Policy 6.220-POL-5 requires that, during Terry stops, officers will take reasonable steps to be courteous and professional. This includes providing the following information: the officer’s name, rank, the reason for the stop, and whether and how the stop is being recorded. (SPD Policy 6.220-POL-5.) This information must be provided as early in the stop as feasible when taking into account any safety considerations.



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As discussed above in the context of the professionalism allegation, the male's alleged conduct and statements would have also been in violation of this policy. Per the Complainant's account, the male did not provide his rank and name, indicate the basis for the stop, or tell the pedestrian whether or not the stop was being recorded. Moreover, the male was neither courteous nor professional during the interaction. However, for the same reasons as indicated above, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegation #5**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 8. Officers May Conduct a Frisk or Pat-Down of Stopped Subject(s) Only if [...]***

SPD Policy 6.220-POL-8 states that an officer may only conduct a frisk or pat-down of a stopped and detained subject if the officer has additional reasonable suspicion that the subject may be armed and dangerous. The frisk/pat-down must generally be conducted of the outer clothing and must be "strictly limited to what is necessary for the discovery of weapons which might be used to harm the officer or others nearby." (SPD Policy 6.220-POL-8.) Moreover, once the officer determines that no weapons are present, there is no further authority for the search. (*Id.*)

Given that I find that the Terry stop in this situation would not have been supported by reasonable suspicion, I further find that there would have been no basis to frisk the pedestrian. However, as the male was not conclusively identified as a police officer, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #1 - Allegation #6**

***6.220 - Voluntary Contacts, Terry Stops & Detentions 10. Officers Must Document All Terry Stops***

SPD Policy 6.220-POL-10 requires that officers document all Terry stops. The form officers use to do so is called a Terry Template. Within the Terry Template, officers are instructed to "clearly articulate the objective facts they rely upon in determining reasonable suspicion." (SPD Policy 6.220-POL-10.)

OPA determined during its investigation that there was no documentation of any stop or incident similar to what was described by the Complainant that occurred in the vicinity of Century Link Field at that approximate date and time. As such, to the extent the stop in this case was conducted by a SPD officer, the failure to generate a Terry Template would have constituted a violation of policy. That being said, OPA was unable to determine whether the male perpetrator was a police officer and, accordingly, I recommend that this allegation be Not Sustained – Inconclusive.

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