



## CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 5, 2018

CASE NUMBER: 2018OPA-0471

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint	Not Sustained (Lawful and Proper)

**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	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Lawful and Proper)

**Named Employee #3**

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Lawful and Proper)

**Named Employee #4**

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Lawful and Proper)

**Named Employee #5**

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Lawful and Proper)



**Named Employee #6**

Allegation(s):		Director's Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Lawful and Proper)

***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:**

It was alleged that the Named Employees involved in the Complainant's arrest may have engaged in biased policing. It was further alleged that these Named Employees may have failed to report the Complainant's purported allegation of biased policing to a supervisor and/or to ensure that an investigation into the allegation was conducted. Lastly, it was alleged that Named Employee #1 failed to identify the purported allegation of bias during her force review.

**ANALYSIS AND CONCLUSIONS:**

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

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 2. Employees Will Assist Any Person Who Wishes to File a Complaint***

SPD Policy 5.002-POL-2 requires that Department employees assist any person who wishes to file a complaint. The policy directs the employee to take the complaint and pass it on to either a supervisor or OPA. (SPD Policy 5.002-POL-2.)

This allegation was classified against Named Employee #1 (NE#1), a Department Administrative Lieutenant, based on her failure to identify the Complainant's purported bias complaint during her review of the underlying incident. Part of NE#1's responsibilities in her role are to review all relevant video to determine whether any potential misconduct occurred and/or whether any allegations of misconduct were made.

While NE#1 reviewed video that recorded the moments before and after the statement was made by the Complainant, she did not recall hearing the allegation. NE#1 further told OPA that, even had she heard the statement, she did not believe that she violated policy when she did not report it because, in her opinion, it did not rise to the level of an actual bias allegation.

As discussed below, I agree that, under the facts of this case, the Complainant's allegation did not rise to the level of an allegation of biased policing as contemplated by Department policy. However, I disagree with NE#1's conclusion that she was not required to "do anything" with the allegation. Even if it did not constitute an allegation of biased policing, NE#1 still should have documented that the statement was made and explained how it was addressed in an appropriate report. Simply doing nothing was not consistent with the Department expectation of critically reviewing any allegation of potential misconduct, regardless of its merits and whether it actually rises to the level of a policy violation.



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That being said, with regard to the allegation classified against NE#1, I recommend that it be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #2 - Allegations #1**

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

The Complainant's child called to report that the Complainant was involved in a DV assault. When the officers arrived at the scene, the Complainant had fled. The officers determined that there was a no contact order between the Complainant and the caller's mother. An area check was conducted and the Complainant was located approximately four blocks away. Named Employee #3 (NE#3) and Named Employee #5 (NE#5) were the first officers to contact the Complainant and they attempted to take him into custody. The Complainant resisted those attempts and engaged in a physical altercation with NE#3 and NE#5. They went over radio and asked other officers to "step it up." Named Employee #2 (NE#2), Named Employee #4 (NE#4), and Named Employee #6 (NE#6) all arrived on the scene and assisted in controlling the Complainant's person and taking him into custody.

While he was being arrested, the Complainant made the following statement: "you guys are so racist here, bro..." As discussed more fully below, OPA does not necessarily believe that this constituted an allegation of biased policing as contemplated by Department policy. However, this was construed to be the case for the purpose of evaluating this allegation and reaching a determination as to its merits.

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.*)

The Named Employees who were involved in the arrest of the Complainant and the force used against him all denied that they engaged in biased policing. They contended that they had probable cause to arrest the Complainant and that the force they used was appropriate under the circumstances in order to take him into custody. Based on my review of the record, I agree.

OPA's investigation yielded the conclusion that law enforcement action was taken against the Complainant not because of his race but because of his conduct. There is no evidence indicating that these Named Employees acted inappropriately with regard to the arrest and force or that they engaged in biased policing. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against NE#2, NE#3, NE#4, NE#5, and NE#6.

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



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

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***

SPD Policy 5.140-POL-5 requires officers to call a supervisor in response to allegations of biased policing. The policy specifically instructs the following: “If a person alleges bias-based policing, the employee shall call a supervisor to the scene to review the circumstances and determine an appropriate course of action.” (SPD Policy 5.140-POL-5.)

As referenced above, during his arrest, the Complainant stated the following: “you guys are so racist here, bro...” All of the Named Employees who were present for that statement denied hearing it. They further stated that, had they heard it, they would have ensured that a supervisor was notified of the allegation and that a bias investigation was conducted.

The Complainant’s allegation was captured by BWV. However, the statement was difficult to hear on the BWV for NE#2 and NE#4. The statement was the clearest on NE#5’s BWV, but NE#5 told OPA that, at the time the statement was made, he had stepped away from the Complainant and, thus, did not recall hearing the statement.

Based on OPA’s review, it appeared that, when the Complainant’s allegation was made, multiple officers were still struggling with him and the scene was not secure. The involved Named Employees explained that, due to the Complainant’s continued physical resistance, they were focused on controlling his person, not on his statements.

Under the circumstances of this case, OPA does not believe the involved Named Employees’ explanations to be unreasonable. Indeed, OPA instead finds that these explanations are consistent with the available evidence. Moreover, even had they heard the Complainant’s statement, OPA is unconvinced that it was actually an allegation of biased policing for which a Bias Review or OPA referral needed to be completed by the involved Named Employees.

OPA interprets SPD Policy 5.140 to require a nexus between the disparate treatment and law enforcement action taken. Under this framework, without facts supporting this nexus, simply stating that individual officers or police officers in general are racist does not rise to the level of a claim of biased policing. From OPA’s review of cases and conversations with officers and supervisors, this appears to be an area of significant confusion. OPA will be taking steps in the upcoming months to provide a list to the Department of some of the most frequently made allegations that, like the Complainant’s statement in this case, do not, in OPA’s opinion, constitute an allegation of biased policing.

With regard to the specific facts of this case, OPA believes that the Complainant’s statement that the involved Named Employees were “racist” failed to meet this standard.

For the above reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**



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**Named Employee #3 - 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 #2, Allegation #1), I recommend that the allegation be Not Sustained – Unfounded.

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

**Named Employee #3 - Allegation #2**

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***

For the same reasons as stated above (see Named Employee #2, Allegation #2), I recommend that the allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #4 - 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 #2, Allegation #1), I recommend that the allegation be Not Sustained – Unfounded. NE#

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

**Named Employee #4 - Allegation #2**

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***

For the same reasons as stated above (see Named Employee #2, Allegation #2), I recommend that the allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #5 – Allegation #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 #2, Allegation #1), I recommend that the allegation be Not Sustained – Unfounded.

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

**Named Employee #5 – Allegation #2**

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***



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For the same reasons as stated above (see Named Employee #2, Allegation #2), I recommend that the allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #6 – Allegation #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 #2, Allegation #1), I recommend that the allegation be Not Sustained – Unfounded.

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

**Named Employee #6 – Allegation #2**

***5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing***

For the same reasons as stated above (see Named Employee #2, Allegation #2), I recommend that the allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**