



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 2, 2019

CASE NUMBER: 2018OPA-1133

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Allegation Removed
# 2	16.110 - Crisis Intervention 16.110 – POL	Sustained
# 3	16.110 - Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis	Allegation Removed
# 4	16.110 - Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis 9. Officers Shall Document All Contacts With Subjects Who are in Any Type of Behavioral Crisis	Sustained

Imposed Discipline

Written Reprimand

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Allegation Removed
# 2	16.110 - Crisis Intervention 16.110 – POL	Sustained
# 3	16.110 - Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis	Allegation Removed
# 4	16.110 - Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis 9. Officers Shall Document All Contacts With Subjects Who are in Any Type of Behavioral Crisis	Sustained

Imposed Discipline

Written Reprimand

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 may have engaged in unprofessional behavior and may have acted contrary to SPD policies concerning individuals in crisis when they planted and pretended to find a camera in the Complainant’s home. It was further alleged that the Named Employees acted contrary to policy when they did not document their contact with the Complainant using a Crisis Template.



ADMINISTRATIVE NOTE:

OPA initially recommended that the following three allegations in this case be Sustained: professionalism; the appropriate response to a subject in behavior crisis; and the documentation of a contact with a subject in crisis. After the discipline meeting, the chain of command concurred with all three recommended findings and this case was transmitted to the Chief of Police for her review. Prior to the Chief making the final decision on findings and discipline, the officers took part in a due process meeting in which they, along with their Guild representative, made a presentation to the Chief. Based on that presentation, which OPA also observed, OPA now deems it appropriate to reverse its finding that the Named Employees violated the Department's professionalism policy. OPA does so because it found the Named Employees' presentation to be genuine and I am convinced that, while they made an error in judgment, the Named Employees did not do so with malicious intent. As such, OPA amends its prior DCM to remove the professionalism allegation against the Named Employees. OPA maintains the other recommended Sustained findings and believes that the conduct at issue is fully subsumed within those allegations.

SUMMARY OF INVESTIGATION:

The Complainant initiated this complaint with OPA in which she alleged that the Named Employees planted cameras in her kitchen. The Complainant asserted that, when the officers did so, they were unprofessional and deceptive.

OPA's investigation indicated that the Named Employees went to the Complainant's residence in response to a theft call. The notes for the call stated that the Complainant's neighbor stole rocks from her backyard, as well as that he was using a device to control her. The call further contained a crisis caution for the Complainant.

During its intake investigation, OPA reviewed the Named Employees' Body Worn Video (BWV) and determined that they did, in fact, hide an In-Car Video (ICV) wireless microphone in the Complainant's kitchen and then "discovered" the microphone while in the Complainant's presence. The BWV indicated that the Named Employee #2 (NE#2) initially raised the hiding of the microphone. In response, Named Employee #1 (NE#1) stated: "Let's do it. That's dirty." NE#2 then hid the microphone and feigned finding it in the Complainant's presence. The officers then told her that they would take the microphone into evidence and began to leave the home. While leaving, the officers told the Complainant that, since they had located the "camera," it solved the Complainant's outstanding complaints. The officers' ICV captured them laughing about the situation while leaving. The officers did not document their response to this incident and did not create a Crisis Template.

OPA determined that, the following day, the Complainant called 911 and again asked for service. During that call, she stated that officers had found a surveillance device in her home the prior evening and she requested that officers come back to check for more. SPD personnel, including an officer assigned to the Crisis Response Unit (CRU), responded to the Complainant's home and were invited inside. The CRU officer documented the response in a report. He wrote that he believed it "very likely that [the Complainant] misunderstood the officers from the day prior and that they had not in fact found a device of any sort." The CRU officer further wrote the following: "I questioned the validity of Officers finding a device to which [the Complainant] disputed and I informed her that I would check with those Officers." Lastly, the CRU officer memorialized that: "As a means of setting boundaries with [the Complainant], I informed her that the Police do not offer any service to sweep for surveillance devices." He reported that, after he stated that to the Complainant, she told him that she did not require any additional assistance from officers. The CRU officer completed a Crisis Template documenting his contact with the Complainant.



As part of its investigation, OPA interviewed the Complainant. The Complainant told OPA that one of the officers kept her occupied in another room while the other planted the camera in her kitchen. She stated that she entered the kitchen and she observed an officer holding the camera, which he claimed to have just found. The Complainant said that the officer refused to show her the camera and asked to hug her. She believed that the officer asked her to give him a hug in order to conceal the act of hiding the camera.

OPA further interviewed both Named Employees. The relevant parts of their testimony are discussed below.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

OPA previously recommended that this allegation be Sustained as against both Named Employees. In reaching this finding, OPA provided the following reasoning:

Based on OPA's review of the record, I find that the Named Employees' conduct during this incident was unprofessional. While both of the Named Employees asserted that their conduct was not meant to be a "joke" and that they acted in good faith, NE#1's statement that hiding the camera would be "dirty" provides some evidence to the contrary. While that term could mean that it was a creative and outside the box idea as NE#1 contended, it also holds more negative connotations, such as engaging in behavior that is mean, unfair, or unscrupulous. Certainly, this terminology coupled with the officers laughing in the aftermath of the incident, as captured by both BWV and ICV, provides a plausible basis to find that they intentionally hid the camera to play a joke on the Complainant. As such, I find that it could be perceived by the general public as demeaning to the Complainant and, as such, the conduct undermined trust in the Named Employees, other officers, and the Department as a whole.

Moreover, I find that the Named Employees' conduct and their hiding of the camera was not an appropriate decision when dealing with an individual in crisis. Indeed, it resulted in escalating the Complainant's crisis and paranoia. Notably, the CRU officer that responded to the Complainant's home the day after the incident was virtually positive that no officer would search for a surveillance camera in the Complainant's home given her crisis caution and went so far as to try to convince the Complainant that this did not occur and explain to her that SPD officers did not engage in such conduct. The Named Employees should have known this – especially NE#1, who told OPA that he had previous experience with the Complainant and knew that she experienced ongoing crisis.



As discussed above, due to the Named Employees' presentations at the due process meeting, OPA concludes that their conduct is better captured by SPD Policies 16.110 and 16.110-POL-5(9). Moreover, OPA believes that the Named Employees did not act with malicious intent during this incident, even if they engaged in poor decision-making. For this reason, a finding that they violated the Department's professionalism policy is not warranted. Accordingly, I amend the DCM to remove this allegation.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #2

16.110 - Crisis Intervention 16.110 – POL

SPD Policy 16.110 provides general guidance concerning crisis intervention. Specifically, this policy provides that: "Persons suffering crises will be treated with dignity." (SPD Policy 16.110.) The policy further instructs that: "The ideal resolution for a crisis incident is that the subject is connected with resources that can provide long-term stabilizing support." (*Id.*) The policy also states: "When officers need to engage with a subject in behavioral crisis, the Department's expectation is that they will attempt to de-escalate the situation, when feasible and reasonable. The purpose of de-escalation is to provide the opportunity to refer the subject to the appropriate services." (*Id.*)

In evaluating the evidence in this case, including the BWV and the officers' statements, I find that they did not appropriately respond to the Complainant, who was clearly suffering from crisis at the time. When they used a "ruse" to convince her that a camera had been found in her kitchen, I find that the Named Employees did not treat the Complainant with the dignity contemplated by this policy. This is the case even if I believe that the Named Employees acted with good but misplaced intentions. The officers did not comply with the fundamental direction of the policy – to connect her with resources and/or to refer her to the appropriate services. Instead, their approach and decision-making caused her crisis and paranoia to escalate. Again, this violated Department policy even if the Named Employees acted in good faith. Lastly, as discussed above in the context of Allegation #1, I find it persuasive that the CRU officer who responded to the Complainant's residence the following day found the concept of officers searching for cameras in the Complainant's residence to be so unbelievable that he tried to convince her that it did not actually occur.

For the above reasons, as I find that the Named Employees' conduct during this incident was outside of what is expected and appropriate when dealing with an individual in crisis, I recommend that this allegation be Sustained as against both of them.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

16.110 - Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis

SPD Policy 16.110-POL-5 provides for how officers are expected to respond to subjects who are in behavioral crisis. SPD Policy 16.110-POL-5(1) specifically instructs that: "Persons suffering crises will be treated with dignity."

As discussed above in the context of Allegation #2, I find that the Named Employees acted contrary to SPD Policy 16.110 in that they did not appropriately respond to a subject in behavioral crisis. I find that SPD Policy 16.110-POL-5



is duplicative of this policy and, as such, believe that a separate finding on this allegation is unnecessary. For these reasons, I recommend that this allegation be removed as against both Named Employees.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegations #4

16.110 - Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis 9. Officers Shall Document All Contacts With Subjects Who are in Any Type of Behavioral Crisis

SPD Policy 16.110-POL-5(9) states that officers shall document all contacts with subjects who are in any type of behavioral crisis.

It is undisputed that the Named Employees failed to document this incident using a Crisis Template. It is further undisputed that the officers believed that the Complainant was in crisis when they responded to her residence. Indeed, the officers stated that they used the “ruse” in this case in order to reduce her crisis and paranoia. As such, a Crisis Template was required.

NE#1 told OPA that he believed that the Complainant’s behavior during the incident was her “baseline” and stated that he had responded to calls involving her previously. However, at his OPA interview, he recognized that he should have documented this contact using a Crisis Template. NE#2 stated that he did not believe that he needed to write a Crisis Template because he believed that his “ruse” removed the Complainant from experiencing crisis. However, he, like NE#1, recognized that he should have properly documented this incident.

I find that, under the circumstances of this case, the officers’ failure to document the conduct in a Crisis Template violated policy and warrants a Sustained finding. I reach this conclusion for three main reasons. First, this was not a transitory interaction with the Complainant or a simple social contact, the officers conducted an investigation, entered her home, searched her home, and engaged in a ruse in order to lessen her crisis that included planting and “finding” a microphone. As such, their law enforcement action and interaction with the Complainant should have been documented. Second, while perhaps not recognized by the officers at the time, the decision to use a “ruse” on an individual in crisis was high-risk and, indeed, did not work and increased the Complainant’s paranoia. This possible consequence of the “ruse” was another reason why it should have been documented. Third, and last, not only did the officers fail to generate a Crisis Template, they did not document their law enforcement activity in any other report. Arguably, given that they engaged in a primary investigation, they should have completed a General Offense Report at a minimum.

Ultimately, as I find that the failure to complete a Crisis Template violated policy and as I find that this failure was particularly significant in this case, I recommend that this allegation be Sustained as against both Named Employees.

Recommended Finding: **Sustained**



Named Employee #2 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #2

16.110 - Crisis Intervention 16.110 – POL

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #3

16.110 - Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis

For the same reasons as stated above (see Named Employee #1, Allegation #3), I recommend that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegations #4

16.110 - Crisis Intervention 16.110-POL-5 Responding to Subjects in Behavioral Crisis 9. Officers Shall Document All Contacts With Subjects Who are in Any Type of Behavioral Crisis

For the same reasons as stated above (see Named Employee #1, Allegation #4), I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**