



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number 2016OPA-1211

Issued Date: 08/07/2017

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> 5.001 (9) Professionalism: Employees Shall Strive to be Professional at all Times (Policy that was issued April 1, 2015)
OPA Finding	Sustained
Final Discipline	1 day suspension

INCIDENT SYNOPSIS

An officer responded to a nuisance call regarding several subjects living in a van, leaving garbage around, and possibly using drugs. While investigating this incident, the Named Employee located a trailer with no plates. His subsequent investigation revealed that the trailer had been reported stolen in 2004. Officers, including the Named Employee, then returned to the scene and towed the trailer. An officer spoke with a man, who stated that he had recently purchased the trailer. The man provided a written receipt for the purchase. The Named Employee spoke with a male subject, who had been seen driving a truck with the stolen trailer connected to it. Another officer wrote the report detailing the incident and no enforcement action was taken.

COMPLAINT

The complainant, the subject's sister, came to the Office of Professional Accountability and initiated a complaint against the Named Employee. The complainant stated that her brother suffered from mental illness and that the Named Employee told another officer that her brother had "the face of a bad guy" and that he was a "cop killer". The complainant believed these statements stemmed from her brother's involvement while "in crisis" in what she believed was an accidental fire the previous year. The complainant then alleged that her brother was discriminated against based on his mental health disability.

OPA added the allegation of Professionalism.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of written statement of Complainant
2. Search for and review of all relevant records and other evidence
3. Review of In-Car Video (ICV)
4. Interview of SPD employee

ANALYSIS AND CONCLUSION

There was no evidence from the OPA investigation to support the allegation of bias. The Named Employee was not known to have made any statements that displayed a bias towards persons who are in crisis or who may have a mental health diagnosis.

The OPA investigation showed that the Named Employee told another officer that the subject had attempted to kill some officers with fire. The Named Employee told OPA he said this so that other officers could be alerted to the potential safety issue with the subject. The subject overheard this comment and engaged with the Named Employee in an argument about whether or not the Named Employee's statement was true. Rather than letting it go, the Named Employee responded to the subject and insisted he (the Named Employee) was correct. The subject became agitated by what the Named Employee said in response to the subject's explanations and began to use profanity and call the Named Employee a "liar." Then the subject asked the Named Employee to "remain silent." The Named Employee replied, "This is not Burger King, you can't get it your way." The subject then said he wanted to call his lawyer, following which the subject and the Named Employee had a protracted and heated exchange about the subject of contacting a lawyer and the fact the subject had no phone with which to call a lawyer. The subject became increasingly agitated as the Named Employee asked him why he (the subject) was still talking and not "exercising all of his rights." The Named Employee then asked the subject, "Why are you talking to me? I'm exercising my rights not to listen to you." A short time later, in response to a statement by the subject indicating he did not think the Named Employee was acting professionally, the Named Employee said, "Your opinion means nothing to me on that matter because you are an attempted murderer." The subject asked if he was

free to go and the Named Employee replied that he was not. When the subject asked why, the Named Employee gave him the reason and then asked the subject if he wanted to get handcuffed “to make it official.” The Named Employee told OPA he offered to handcuff the subject because he has found being handcuffed can have a “calming effect” on some people and he was merely offering the subject that option. The Named Employee and the subject exchanged a few more words and then the subject told the Named Employee that he (the subject) was being assaulted by the Named Employee’s “breath, your mouth.” The Named Employee replied that the subject was now using “second or third grade humor.” A few moments later, the Named Employee told the subject he was free to go. After another brief exchange between the Named Employee and the subject, the subject left.

SPD Policy 5.001(9) states, in part, “Regardless of duty status, employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers. Employees will avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” The Named Employee’s decision to inform other officers that the subject had, during a completely different incident, assaulted police officers with flaming gasoline was reasonable under the circumstances. The other officers needed to have that information so they could appropriately plan how to engage with the subject. Clearly, the subject took exception to what the Named Employee said and began to argue and explain his side of the story. The subject had every right to say whatever he wanted, but the Named Employee had no obligation to respond to the subject and get into a “yes you did; no I didn’t” argument with the subject. The Named Employee’s on-going dialogue with the subject merely served to make the subject more and more agitated. After listening several times to the exchange between the them, it was the OPA Director’s conclusion that both the subject and the Named Employee kept the conversation going and were equally responsible for the escalating nature of the exchange. In addition, some of what the Named Employee said to the subject was unnecessary, childish and served only to agitate the subject further. In particular, the statements about “Burger King,” “second or third grade humor” and “your opinion means nothing to me” were insulting and unprofessional. Given the Named Employee’s knowledge regarding the subject’s involvement in the previous arson incident and what he (the Named Employee) could observe during this incident, the Named Employee should have been aware that the subject was volatile, easily excited and likely had a mental health issue.

SPD has invested substantial resources in training all officers in tactics and techniques for interacting with persons in crisis, whether from a mental health issue or for some other reason. SPD Policy 16.110-POL states, in part:

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. This expectation does not restrict an officer’s discretion to make an arrest when probable cause exists, nor are officers expected to attempt de-escalation when faced with an imminent safety risk that requires immediate response. An officer’s use of de-escalation as a reasonable alternative will be judged by the standard of objective reasonableness, from the perspective of a reasonable officer’s perceptions at the time of the incident.

Nonetheless, far from attempting to de-escalate the interaction with the subject, the Named Employee engaged in a pattern of comments and behavior that unnecessarily escalated the interaction with the subject. The Named Employee's behavior in this interaction could reasonably be seen as an attempt to provoke the subject into losing his temper or becoming out of control.

FINDINGS

Named Employee #1

Allegation #1

The OPA investigation produced no evidence to support the allegation of bias. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Bias-Free Policing: Officers Will Not Engage in Bias-Based Policing*.

Allegation #2

The OPA investigation found that the Named Employee engaged in a pattern of comments and behavior that unnecessarily escalated the interaction with the subject. Therefore a **Sustained** finding was issued for *Professionalism: Employees Shall Strive to be Professional at all Times*.

Discipline Imposed: 1 day suspension

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.