



## CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 13, 2018

CASE NUMBER: 2017OPA-0732

### Allegations of Misconduct & Director’s Findings

#### Named Employee #1

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

#### 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 (Inconclusive)

#### 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 (Inconclusive)

#### Named Employee #4

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

***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:**

OPA opened this intake because the subject made an allegation of bias policing which was discovered during review of the ICV during the supervisor’s force investigation. The bias allegations were apparently not reported to a supervisor by the officers at the scene, which was potentially in violation of policy. OPA also investigated the allegation that the officers, themselves, may have engaged in biased policing.



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**ADMINISTRATIVE NOTE:**

This case was submitted by the OPA investigator for review after the expiration of the 180-day deadline.

In addition, it is unclear why two other officers who were both interviewed by OPA were not identified as Named Employees in this matter given that both were in the vicinity of the subject and the subject's girlfriend when the allegations of bias were made. Notably, one of the officers stated that he heard the allegations of bias and admitted that he did not report them because he thought one of the other officers present would do so.

**STATEMENT OF FACTS:**

On the date in question, officers observed the subject urinating on a building. They attempted to stop him and obtain his identification in order to issue him a citation. The subject refused to give his name or identification due to the fact that there was no warrant for his arrest and no video of him urinating. The subject's girlfriend, who is the Complainant in this case, also stated that the subject did not have to provide his name and stood between the officers and pushed an officer with her open hand. The subject then walked away. More officers arrived on the scene and attempted to place the subject under arrest. The subject resisted their attempts to do so and struggled with officers, but they were ultimately able to place him under arrest. The officers were required to use force to do so. The girlfriend was also arrested. During the incident, and based on a review of the In-Car Video (ICV), it is clear that the subject's girlfriend made multiple comments that law enforcement action was being taken against the subject based on the fact that he was "Black." She also made pejorative racial comments towards one of the officers.

**ANALYSIS AND CONCLUSIONS:**

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

***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 that "[i]f 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. The policy further states that: "For the purposes of this policy, 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 characteristics..." (SPD Policy 5.140-POL-5.)

None of the officers who responded to this incident, including Named Employee #1 (NE#1), reported these complaints of bias to a supervisor. A supervisor identified the bias allegations when reviewing ICV during his review of the force used on the subject. That supervisor then completed a bias review template and, in doing so, interviewed NE#1 and Named Employee #4 (NE#4).

NE#1 denied hearing the bias allegations. He stated that "he was watching the backs of the officers affecting the arrest and dealing with other people in the crowd." NE#1 reiterated that he did not hear the bias allegations to OPA during his interview even though it is clear that they occurred in his general vicinity.



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However, given the amount of commotion and yelling by both the subject and the subject's girlfriend and the overall chaotic nature of this incident, I cannot conclusively say that NE#1's purported failure to hear these statements was unreasonable and, thus, that he violated policy by failing to notify a supervisor.

As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

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

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

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 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 my review of the documentation generated by the involved officers, the ICV, and the interviews with all of the involved parties, I see no evidence indicating that the Named Employees' actions were based on bias. Instead, I find that there was sufficient probable cause to place both the subject and, later, his girlfriend under arrest, as well as to use reasonable, necessary and proportional force when he resisted the officers' lawful attempts to do so.

As such, I recommend that this allegation be Not Sustained – Unfounded.

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

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

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

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

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

During his OPA interview, Named Employee #2 (NE#2) stated that he did not recall hearing either the subject or the subject's girlfriend make a complaint of bias. NE#2 stated that had he heard such allegations, he would have reported them to a supervisor immediately.



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While, as indicated above, it appeared that complaints of bias were made by the subject's girlfriend in NE#2's general vicinity, he denied hearing them. Given the amount of commotion and yelling by both the subject and the girlfriend and the overall chaotic nature of this incident, I cannot conclusively say that NE#2's purported failure to hear these statements was unreasonable and, thus, that he violated policy by failing to notify a supervisor.

As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #3 - 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 #1, Allegation #2), I recommend that this 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***

During his OPA interview, Named Employee #3 (NE#3) indicated that he did not recall hearing either the subject or the subject's girlfriend make a complaint of bias. However, he further stated that he believed that he fully screened this incident with his supervisor. There is no evidence, however, either on ICV or in the bias review template completed by the supervisor that he did so.

While, as indicated above, it appeared that complaints of bias were made by the subject's girlfriend in NE#3's general vicinity, he denied hearing them. Given the amount of commotion and yelling by both the subject and the girlfriend and the overall chaotic nature of this incident, I cannot conclusively say that NE#3's purported failure to hear these statements was unreasonable and, thus, that he violated policy by failing to notify a supervisor.

As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

**Named Employee #4 - Allegation #1**

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

NE#4, like NE#1, was interviewed by the supervisor during the completion of the bias review template. NE#4, like NE#1, stated that she did not hear the allegations of bias made by the subject's girlfriend. NE#4 specifically told her supervisor "that with all the chaos and loud voices at the scene, she did not hear [the girlfriend] make the comment." NE#4 reiterated these statements at her OPA interview and relayed how chaotic and stressful the situation was.



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While, as with the other Named Employees, it appeared that complaints of bias were made by the subject's girlfriend in NE#4's general vicinity, she denied hearing them. Given the amount of commotion and yelling by both the subject and the girlfriend and the overall chaotic nature of this incident, I cannot conclusively say that NE#4's purported failure to hear these statements was unreasonable and, thus, that she violated policy by failing to notify a supervisor.

As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

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

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

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that this allegation be Not Sustained – Unfounded.

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