



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 18, 2018

CASE NUMBER: 2017OPA-0887

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Training Referral)
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 4	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)
# 5	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.200 - Using Force 1. Use of Force: When Authorized	Not Sustained (Unfounded)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Training Referral)
# 3	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 4	5.140 - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)
# 5	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	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:

The Complainant, a Department sergeant, reported that the Named Employees contacted two subjects to investigate if a possible crime had just occurred. The Complainant then reported that he learned from the Named Employees that one of the subjects alleged that the Named Employees were "racist" and the other subject alleged that the Named Employees had "slammed" his head on the ground. The Named Employees failed to report both the allegation of excessive force and bias to the sergeant when they initially screened the call with him via the phone. OPA added allegations of dishonesty as it was evident from ICV that the force and bias allegations were made in the presence of the Named Employees, and it was unclear why those allegations were not reported to the Complainant when he was initially contacted on the phone by the Named Employees.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

SPD Policy 8.200(1) requires that force used by officers be reasonable, necessary and proportional. Whether force is reasonable depends “on the totality of the circumstances” known to the officers at the time of the force and must be balanced against “the rights of the subject, in light of the circumstances surrounding the event.” (SPD Policy 8.200(1).) The policy lists multiple factors that should be weighed when evaluating reasonableness. (*See id.*) Force is necessary where “no reasonably effective alternative appears to exist, and only then to the degree which is reasonable to effect a lawful purpose.” (*Id.*) Lastly, the force used must be proportional to the threat posed to the officer. (*Id.*)

Subject #1 alleged that the Named Employees slammed his head into the ground and that they “beat” him. Both officers denied doing so. Two other officers were witnesses to the force. One of the officers denied seeing the Named Employees beat Subject #1 or slam his head into the ground. The other officer similarly denied observing such conduct.

The Named Employees reported engaging in a soft takedown of the subject and then handcuffing him. When the officers first observed Subject #1, he was leaning over and had his hands on Subject #2, who was lying still on the ground. The officers were concerned that they were witnessing an assault in progress. Named Employee NE#2 (NE#2) wrote that he guided Subject #1 away from Subject #2 and asked him to sit down. Subject #1 initially sat down and then got up. Based on his concerns for his safety, NE#2 stated that he placed Subject #1 into handcuffs. NE#2 reported that, in order to do so, he took Subject #1 down to the ground from his seated position in a controlled takedown. Named Employee #1 (NE#1) assisted NE#2 in handcuffing Subject #1 while he was lying on his stomach on the ground. According to NE#1 and NE#2, as well as the other two officers, this was the extent of the force used against Subject #1.

I find that the force used to handcuff Subject #1 – the soft takedown – as well as the handcuffing itself, was reasonable, necessary, and proportional, and, thus, consistent with policy.

As I interpret the gravamen of this allegation to be Subject #1’s complaint that he was beaten and that his head was slammed into the ground, I recommend that this allegation be Not Sustained – Unfounded. Otherwise, I would have recommended that this allegation be Not Sustained – Lawful and Proper with regard to the force that NE#1 and NE#2 actually did report using.

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

Named Employee #1 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

Here, the Named Employees called their supervisor, a sergeant, after engaging in a discussion with the subjects. During that conversation, Subject #1 alleged to the officers that they “beat” him and that they “slammed [his] head



into the fucking floor.” During that same conversation, Subject #2 told the Named Employees “you all are racist as hell.” The officers then asked the subjects whether they wanted them to call their supervisor and the subjects responded affirmatively. During the conversation with their supervisor, however, the Named Employees only told the sergeant that there was only a complaint about handcuffing. Notably, both officers affirmed to their supervisor, presumably in response to a question posed by him, that there was no complaint of bias. The officers told the sergeant that Subject #1 indicated that he wanted a supervisor and stated that he would remain at the scene, but that Subject #1 then walked off.

After they got off the phone with the sergeant, the officers discussed whether there was a complaint of bias between themselves. The officers decided that there was not and that they only heard Subject #2 state: “that’s why we are killing all these people,” which neither officer interpreted as a complaint of bias.

When the sergeant responded to the scene, the subjects were both gone. The sergeant discussed the incident with the Named Employees. At that time, the officers told the sergeant that Subject #1 had alleged that his head was slammed against the ground and that Subject #2 alleged to the Named Employees that “you are all racist.” The sergeant told to the officers that they failed to inform him of these allegations over the phone. Both officers told the sergeant that they needed to listen to their ICV to determine that the statements had been made.

NE#1 stated that he heard Subject #1’s allegation that he was “beat” by officers, but that he did not report it to his supervisor. He explained that he and NE#2 did not use such force and that, due to the dynamic nature of the incident, he did not think to report the allegation to his supervisor. NE#1 stated that he heard Subject #2’s allegation of racism, but that he did not think it was a bias complaint. NE#1 stated that, after the fact, he discussed the matter with NE#2 and reviewed his video and that they collectively decided that it was, in fact, a bias complaint that needed to be screened with their supervisor.

During his OPA interview, the sergeant stated that he was initially “a little concerned” by the Named Employees’ failure to tell him about the complaints of force and bias. However, he stated that his concerns were addressed when the officers explained to him why they did not initially do so. He stated that, ultimately, he believed the Named Employees’ accounts.

SPD Policy 5.002-POL-6 requires SPD employees to report alleged violations. Allegations of serious misconduct, such as the use of excessive force and biased policing that were at issue here, were required to be reported to a supervisor.

NE#1 and NE#2 should have reported these allegations during their initial conversation with their supervisor. Both were allegations of serious misconduct that were required to be reported as soon as possible. While they initially did inform their supervisor of the allegations, it was not until after their supervisor had already arrived at the scene, the subjects had left, and they had watched their ICV. I am further confused by NE#1’s belief that Subject #2’s allegation of racism did not constitute a bias complaint. This was clearly the case and NE#1 should have known that and treated the allegation accordingly. While I do not find that their failures to immediately report these allegations to Sergeant Watson necessarily constituted a violation of policy, I believe that a training referral is warranted.

- **Training Referral:** NE#1 should be re-trained concerning the responsibility to completely and accurately screen with a supervisor complaints of serious misconduct, including allegations of excessive force and



biased policing. NE#1 should also receive counseling from his chain of command regarding his failure to understand that an allegation of racism is an allegation of biased policing. This re-training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #3

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 discernible personal characteristic...” (*id.*)

Based on my review of the record, I find no evidence that the Named Employees engaged in biased policing. As discussed above, the officers had reasonable suspicion to detain the subjects to investigate the incident and the force used against subject Mohamed was lawful. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #4

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 employees call a supervisor in response to an allegation of biased policing.

As discussed above, even though he heard Subject #2 state that the officers were “racist,” NE#1 did not notify his supervisor of her allegation of biased policing. NE#1 explained that he did not initially perceive this as an allegation of bias, which I find troublesome.

However, a supervisor was notified to come to the scene based on a complaint concerning the force connected to the handcuffing of Subject #1 and when the supervisor arrived on the scene the Named Employees screened the bias complaint with him. As such, while the officers failed to comply with this section of the policy, that they ultimately did report the complaint of bias to the sergeant convinces me that a sustained finding is unnecessary. Instead, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should be re-trained as to the elements of this policy and the requirement that he screen complaints of bias when they are made with a supervisor. As discussed above, NE#1 should further be counseled concerning the characteristics of a bias complaint and, specifically, that an allegation of racism is synonymous with a complaint of bias. This re-training and associated counseling should be memorialized in a PAS entry.



Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #5

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

SPD Policy 5.001-POL-10 requires SPD employees to be complete and truthful in all communications.

This allegation was classified in this case based on the possibility that the Named Employees deliberately failed to inform their supervisor of the nature of the force and bias complaints that had been made by the subjects. The Named Employees explained that they simply failed to fully report the complaints based on the dynamic nature of the incident. NE#1 further stated that he did not perceive Subject #2's complaint to be alleging bias and NE#2 stated that he did not hear it. Both Named Employees indicated that, after their initial screening of the incident with their supervisor, they discussed what the subjects had said amongst themselves and watched their ICV. The Named Employees recounted that they then realized that they had failed to completely relay the subjects' allegations and they told their supervisor the full account of what the subjects had said when the sergeant arrived on the scene.

As explained above, while the sergeant was initially concerned with what was an inaccurate and incomplete report by the Named Employees, he later understood their explanation for their failure and did not believe that they were being dishonest.

While I find the Named Employees' account unconvincing and while I am concerned that they only fully reported the subjects' allegations after reviewing their ICV, I do not find sufficient evidence to establish that they engaged in dishonesty. Further weighing in favor of this determination is that they did, in fact, ultimately report the full substance of the subjects' allegations to the sergeant.

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

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

Named Employee #2 - Allegation #1

8.200 - Using Force 1. Use of Force: When Authorized

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

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

Named Employee #2 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

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



- **Training Referral:** NE#2 should be re-trained concerning the responsibility to completely and accurately screen with a supervisor complaints of serious misconduct, including allegations of excessive force and biased policing. NE#2 should also receive counseling from his chain of command regarding his failure to understand that an allegation of racism is an allegation of biased policing. This re-training and associated counseling should be memorialized in a PAS entry

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #3

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 #3), I recommend that this allegation be Not Sustained – Unfounded

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

Named Employee #2 - Allegation #4

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 #1, Allegation #4), I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2 should be re-trained as to the elements of this policy and the requirement that he screen complaints of bias when they are made with a supervisor. As discussed above, NE#2 should further be counseled concerning the characteristics of a bias complaint and, specifically, that an allegation of racism is synonymous with a complaint of bias. This re-training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #5

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

For the same reasons as stated above (see Named Employee #1, Allegation #5), I recommend that this allegation be Not Sustained – Unfounded.

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