



## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 17, 2018

CASE NUMBER: 2017OPA-0945

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Unfounded)
# 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:

The Complainant alleged that the Unknown Employees were unprofessional and biased in that they purportedly did not treat all demonstrators equally during a protest.

### ANALYSIS AND CONCLUSIONS:

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

***5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times***

The Complainant initiated this complaint with OPA based on her displeasure with how SPD policed a recent demonstration. In her complaint, the Complainant stated: “I was deeply disturbed that the Seattle police department was so solicitous of Nazis and so brutal to counter-protestors. Since when are those who espouse hatred and violence supposed to be protected while those who advocate for equality maced and manhandled? What’s wrong with you people?” OPA received two other complaints concerning this demonstration, both of which contained similar allegations. (See 2017OPA-0943; 2017OPA-0944.)

The demonstration that the Complainant was referring to, which was called the “Freedom Rally,” was a permitted event led by a right leaning group called Patriot Prayer. The demonstration was planned to occur in Westlake Park with the potential for a march to other areas of the City and less than 100 attendees were expected. An unpermitted counter-protest was also planned and was referred to as “Solidarity Against Hate.” The goal of these demonstrators, who were estimated prior to the event to number between 200-300 people, was to march to Westlake Park to protest against the Freedom Rally.

These competing rallies occurred the day after protests in Charlottesville, Virginia, which grew violent and resulted in the murder of a counter-protestor. SPD was concerned, as indicated in the pre-demonstration Incident Action Plan, that the Seattle demonstration could also become violent. SPD also was focused on allowing each side to fully express their views consistent with the First Amendment, but to ensure that this was done safely. There was nothing in the Incident Action Plan that suggested that the Department favored one side or viewpoint over the other.



---

During the incident, the crowd of counter-protestors was estimated to be close to 1,000, while the Freedom Rally group was significantly less. The demonstration and marching was peaceful until the late afternoon when counter-protestors began trying to push through a police line and began throwing items at the police. At this point, pepper spray was used to prevent further assaults and prevent ongoing disorder. One arrest was made. After further like conduct by counter-protestors, a dispersal order was given. The counter-protestors began to move towards Westlake Park where the police set up fence lines to allow each side to express their viewpoints. This remained the status quo without any further violence until the crowd dispersed.

During its investigation into this complaint, OPA reviewed documents generated by the Department, and media articles, tweets and blogposts that covered the demonstrations in real-time. Moreover, in the context of the other related complaints, OPA reviewed both Department and third party video. Lastly, OPA also interviewed the Complainant. Notably, the Complainant told OPA that she did not actually witness first-hand any officers use pepper spray or any force against counter-protestors. Indeed, she stated that she was at a peaceful area of the protest and did not observe any officers engage in misconduct.

SPD Policy 5.001-POL-9 requires that SPD employees “strive to be professional at all times.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-9.)

The allegation here is that by purportedly favoring the participants in the Freedom Rally over the participants in the Solidarity Against Hate counter-protest, the unknown SPD officers policing these demonstrations engaged in behavior that undermined the public’s trust. As explained below, the First Amendment protects speech (within certain parameters) and SPD personnel are tasked with allowing individuals to express their beliefs without fear of harm, violence, or being prevented from speaking. While I understand the concern regarding the message espoused by some of the participants of the Freedom Rally, they were permitted to convey that message and were entitled to protection while doing so. Moreover, I find no evidence that the Department actually favored one viewpoint over another or targeted counter-protestors.

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

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

**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 allegation of bias was premised on the Complainant’s belief that SPD was protecting the Freedom Rally group and their viewpoints over those of the counter-demonstrators and that force was used disparately against the counter-demonstrators.



---

With regard to the first allegation, SPD officers were assigned to provide security for a demonstration and counter-demonstration at which violent acts and disorder was feared. This was particularly the case given what had occurred in Charlottesville and the criticism of how local law enforcement there responded or failed to respond. While not at nearly the magnitude as what occurred in Charlottesville, acts of violence and disorder did, in fact, occur during the Seattle demonstration. SPD officers are regularly assigned to serve in a role that facilitates individuals' expression of their First Amendment rights in a safe manner. This is the case regardless of what those individuals' viewpoints are. That some the demonstrators were white supremacists advocating viewpoints that I and I imagine all of SPD finds abhorrent does not relieve these officers of their obligation to objectively carry out their duties in accordance with the law. Moreover, it certainly does not establish that they engaged in biased policing. This view is consistent with established United States Supreme Court precedent that protects the rights of individuals to express themselves, even where that expression is offensive. *See, e.g., Nationalist Socialist Party of America v. Village of Skokie*, 432 U.S. 43 (1977); *Terminiello v. City of Chicago*, 337 U.S. 1 (1949).

With regard to the second allegation, I find no evidence that force was used disparately against counter-protestors. The objective facts establish that a small number of counter-protestors engaged in disorder and assaultive acts towards the police and that force was accordingly used against them to protect the officers and to ensure that this behavior did not continue to occur. The Freedom Rally participants did not, as a general matter, engage in such disorder and violence and, for that reason, no force was reported to have been used against them. As such, I find that the Department did not use force disparately and that counter-protestors were not unfairly targeted by the police to be "maced" and "manhandled."

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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