



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 16, 2018

CASE NUMBER: 2017OPA-0969

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	15.120 - Malicious Harassment, Crimes with Bias Elements, and Non-Criminal Incidents 3. Cases of Malicious Harassment and Bias Incidents Shall be Documented on a General Offense Report	Not Sustained (Unfounded)
# 2	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	15.120 - Malicious Harassment, Crimes with Bias Elements, and Non-Criminal Incidents 3. Cases of Malicious Harassment and Bias Incidents Shall be Documented on a General Offense Report	Not Sustained (Unfounded)
# 2	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Training Referral)

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 Named Employees responded to a disturbance that resulted in an assault against a subject wearing a swastika armband who was assaulted by an unknown assailant. The Named Employees were alleged to have failed to document the incident as required by policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

15.120 - Malicious Harassment, Crimes with Bias Elements, and Non-Criminal Incidents 3. Cases of Malicious Harassment and Bias Incidents Shall be Documented on a General Offense Report

The Named Employees were notified that an individual (referred to herein as the “subject”) was standing in the vicinity of Third Avenue and Pike Street, was wearing an armband with a swastika on it, and was trying to start a fight with a passerby. The Named Employees had earlier that day responded to another call regarding the subject in which he was reported to be yelling at a passerby. The Named Employees went to the subject’s location and made contact with him. They observed that the subject appeared to be bleeding from his mouth, but was otherwise alert and conscious. Named Employee #2 (NE#2) reported asking the subject whether he needed medical aid and the



subject declined that offer. The Named Employees asked the subject what had occurred and he reported that he was “beat up by a Black mother fucker.” The subject stated that his alleged assailant had left the scene. The officers asked the subject whether he wanted them to take a report to document this incident and the subject stated: “No. I am not a rat.” The Named Employees did not ultimately summon medical assistance for the subject and did not document this incident in a General Offense Report until three days later.

SPD Policy 15.120-POL-3 states that cases involving malicious harassment and bias incidents must be documented on a General Offense Report. Based on the plain language of the policy, this is the case regardless of whether the victim requests that the report be generated.

Based on a technical reading of this policy, the crime at issue – the subject being punched because he was picking a fight with a passerby while wearing a swastika armband, does not constitute a bias incident or malicious harassment. Even if the subject was punched because he was espousing fascist ideals, being a Nazi is not a protected class for the purposes of establishing either bias or malicious harassment. Accordingly, the Named Employees did not violate this section of the policy as it is inapplicable to this case. While they did not complete a General Offense Report until three days after the incident, that behavior is captured in the discussion below regarding SPD Policy 15.180-POL-5. For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

Named Employee #1 - Allegation #2

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

SPD Policy 15.180-POL-5 requires that officers document all primary investigations on a General Offense Report. Even where victims of crime refuse to cooperate and to give a statement, officers are still required to document that fact in a report. (SPD Policy 15.180-POL-5.) Lastly, the Department’s expectation, which has been clearly conveyed to officers, is that this report will be completed prior to the end of their shift on the date of the incident.

Here, the Named Employees did not document this incident until three days after the incident, when NE#2 completed a General Offense Report. The timing of this report coincided with media coverage of this incident by several local and national news outlets. It is likely that, had this matter not received such coverage, no report would have ever been generated.

The Named Employees explained at their OPA interviews that they did not generate a report initially because the subject refused to cooperate. While this refusal to cooperate would have likely impeded any prospective prosecution, it was not a reason to fail to document this matter. Moreover, the officers cited that they did not know the victim’s identity; however, neither officer took steps to try to discover this information. Lastly, the officers did not complete the report until three days after the incident and not until after the media covered the incident and they were told by a supervisor to document it.

While I find that the Named Employees’ failure to write a timely report violated policy, the fact that a report was, in fact written, convinces me that a Training Referral, rather than a Sustained finding, is the appropriate disposition. As such, I recommend that this allegation be Not Sustained – Training Referral.



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- **Training Referral:** The Named Employees should both receive additional training concerning the requirements of SPD Policy 15.180-POL-5. They should be counseled by their chain of command to document potential crimes, such as the one that occurred in this case, regardless of whether the victim wants to cooperate and/or refuses to provide identifying information. The Named Employees should be informed by their chain of command that the failure to do so in this incident was inconsistent with the Department's expectations. This training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #2 - Allegation #1

15.120 - Malicious Harassment, Crimes with Bias Elements, and Non-Criminal Incidents 3. Cases of Malicious Harassment and Bias Incidents Shall be Documented on a General Offense Report

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

15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report

For the same reasons as stated above (see Named Employee #1, Allegation #2), I recommend that NE#2 receive a Training Referral.

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