



## **CLOSED CASE SUMMARY**

ISSUED DATE: MAY 31, 2019

CASE NUMBER: 2017OPA-1096

### **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 (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:**

The Complainant alleged that Named Employee acted unprofessionally towards him. The Complainant further alleged that the Named Employee discriminated against him based on his disability when he told the Complainant that he could not be inside of a shelter with a dog.

#### **ADMINISTRATIVE NOTE:**

During the pendency of this investigation, the Named Employee went out on long-term sick leave. When that occurred the 180-day timeline tolled. The Named Employee ultimately did not return to work and retired. As he is no longer a member of a collective bargaining unit, the disciplinary deadlines no longer apply to him. However, for administrative purposes, OPA has set the 180-day deadline for this case as the date of this DCM – May 31, 2019.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegations #1**

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

The Complainant alleged that he was getting lunch at a shelter and that, at that time, he had his dog with him. The Complainant asserted that he was disabled and the dog was a service animal. He told OPA that he had been bringing his dog into the shelter for around three weeks. However, on the date in question, Named Employee #1 (NE#1), who was working off-duty at the shelter, purportedly questioned him about the dog repeatedly and told the Complainant to leave. The Complainant stated that, when he did so, NE#1 was unprofessional. Specifically, the Complainant stated that NE#1 put his hand on the Complainant’s shoulder and that NE#1 was playing with his firearm holster so as to intimidate the Complainant.

The General Offense Report concerning this incident was written by another officer. That officer, who responded to the scene based on the Complainant’s complaint, spoke with both the Complainant and NE#1. NE#1 denied acting



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unprofessionally or trying to intimidate the Complainant. NE#1 acknowledged questioning the Complainant about the dog and telling him that, if he did not like it, he would have to leave the shelter. The officer again spoke with the Complainant and the Complainant asked that a supervisor come to the scene. A supervisor did come to the scene and spoke with the Complainant. As a result of that conversation, this investigation was initiated.

As NE#1 was working off-duty on the date in question, he was not equipped with Body Worn Video (BWV). As such, the interactions between NE#1 and the Complainant were not captured by video. Moreover, while OPA attempted to interview NE#1 to get his account of what occurred, he went out on long-term leave during the pendency of this investigation and ultimately retired from the Department. He did not respond to an email and a letter requesting his interview.

OPA also tried to interview the Complainant. However, he, like NE#1, did not respond to OPA's inquiries and he was not interviewed.

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 policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

As discussed above, there is no video evidence of the interaction between NE#1 and the Complainant. There are also no independent witness accounts supporting one account over the other. Lastly, NE#1 declined to consent to an OPA interview and, as such, he did not offer his recitation of what occurred. For these reasons, I cannot reach a conclusive determination as to what took place during this incident and determine whether NE#1 did, in fact, act professionally. 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***

The Complainant further alleged that NE#1 discriminated against him based on his disability when NE#1 asked him to leave the shelter.

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.*)

Even without NE#1's testimony, I find that there is insufficient evidence in the record to establish that NE#1 engaged in biased policing. I reach this conclusion based on my belief that the Complainant's allegations as set forth in the General Offense Report, even if true, due not rise to the level of biased policing. Indeed, NE#1 may have been



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permitted in questioning the Complainant's usage of a dog and simply asking those questions is not contrary to the policy proscribing biased policing, even if those questions were asked in an unprofessional manner.

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

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