



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 17, 2018

CASE NUMBER: 2018OPA-0300

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.140 - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)
# 3	15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	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	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

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	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 #1 failed to properly investigate a claim of harassment. The Complainant further alleged that all of the Named Employees were unprofessional and engaged in biased policing towards him.

ADMINISTRATIVE NOTE:

This case was designated as a full investigation on the allegations involving Named Employee #1 but as an Expedited Investigation as against Named Employee #2 and Named Employee #3. With regard to these two Named Employees, this means that OPA, with the OPA Auditor’s review and approval, believed that it could reach and issue



recommended findings based solely on its intake investigation and without interviewing the Named Employees. As such, Named Employee #2 and Named Employee #3 were not interviewed as part of this case.

STATEMENT OF FACTS:

The Complainant called the police to report that his building management had sent letters to a number of other tenants that contained his background information, including his past criminal history. Named Employee #2 (NE#2) and Named Employee #3 (NE#3) were dispatched to the scene. When they arrived, they spoke both with the Complainant and with an employee of the building. They confirmed that multiple tenants had received these letters in their mailboxes. The Complainant contended that the individual who sent the letters was the same person who had also recently assaulted him. He stated that he believed that the handwriting on the letters was the same as an exemplar of the other individual's handwriting. The officers examined the letters, but had no evidence, other than that proffered by the Complainant, to connect them to the other individual.

The officers spoke to the building employee who told them that another tenant had stated that the Complainant had, himself, mailed the letters out. The officers spoke with this other tenant who confirmed her account. She further stated that the Complainant did so to get the building management in trouble. The officers reviewed building security video and did not discover any additional evidence. The officers gave the Complainant a business card and then left the scene.

The Complainant later called the North Precinct to discuss his case. He stated that he tried to reach Named Employee #1 (NE#1), who was assigned to the North Precinct Community Policing Team, but that NE#1 did not initially return his calls. Ultimately, they spoke and discussed his case. The Complainant stated that NE#1 told him that they were not going to further investigate his case and that they did not have handwriting experts that were going to compare the letters to another document. The Complainant relayed that NE#1 told him that SPD would only investigate claims of harassment. The Complainant stated that he was being harassed by the building staff and NE#1 told him that he would look into it in the next two weeks.

The Complainant asserted that NE#1 was rude and dismissive during their conversation. He further contended that NE#2 and NE#3 were also dismissive to his concerns. Lastly, he alleged that all of the Named Employees were biased against him because he was a resident of a low-income housing building.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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 multiple protected classes that are set forth in the policy. (*See id.*)



Here, the Complainant alleged that NE#1 engaged in bias towards him because he was a resident of a low-income housing building. Even if this is true, this is not a protected class under the policy. As such, NE#1 technically could not have engaged in biased policing towards him on this ground.

Moreover, even if evaluated on the merits, there is simply no evidence in the record that NE#1's actions and demeanor towards the Complainant was based on bias. Simply stated, there must be more evidence than the unsupported statement of the Complainant to prove this claim.

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

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

Named Employee #1 - Allegation #hi2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

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.)

As discussed above, the Complainant alleged that NE#1 was rude and dismissive during their phone call relating to this incident. As an example of this alleged conduct, the Complainant pointed to NE#1's statement that SPD was not going to investigate his case. NE#1 denied engaging in unprofessional conduct or being rude and dismissive towards the Complainant. He recalled telling the Complainant that the Department was likely not going to take fingerprints off of the letter, but he did not believe that this was unprofessional.

The Complainant also alleged that he called NE#1 multiple times, but that NE#1 did not return his calls. Similarly, the building employee also stated that he tried to call NE#1 without success and without hearing back from him. That NE#1 did not promptly return these phone calls is unfortunate, but it suggests a high workload rather than unprofessional behavior. Notably, the building employee later told OPA that, when he did finally speak with NE#1, he found NE#1 to be very helpful.

Ultimately, there is no audio recording of NE#1's conversation with the Complainant. As such, I have no way to determine, when applying a preponderance of the evidence standard, whether NE#1 was rude and dismissive during that call, thus engaging in unprofessional behavior. In reaching this decision, I note that the Complainant also referred to NE#2 and NE#3 as dismissive, which was conclusively disproven by the video. While this fact causes me to lean more towards crediting NE#1's account, I ultimately cannot reach a conclusive decision on this issue.

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

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



Named Employee #1 - Allegation #3

15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

SPD Policy 15.180-POL-1 concerns primary investigations and directs officers to conduct a thorough and complete search for evidence.

NE#1 recounted multiple conversations that he had with the Complainant. He stated that he recalled speaking to the Complainant about this case and the Complainant asking that the letters be examined for fingerprints. NE#1 told the Complainant that this was unlikely to happen. NE#1 explained to OPA that it was not the role of a patrol officer to examine a document for fingerprints. He stated that this was done by specialized technicians at the request of either the investigating officers (NE#2 and NE#3) or a follow up unit. NE#1 stated that, at the time of the phone call, the case was not assigned to him and he did not work for a follow up unit.

Based on the above, and due to NE#1's role in regards to this case, I do not believe that he was obligated to examine the letters for fingerprints or to have someone else do that. I agree with NE#1 that this was the responsibility of the assigned officers or a follow up unit. I also note that, given the workload and resource limitations of the Department, such investigatory steps likely would not have occurred regardless.

For these reasons, I do not find that NE#1 violated this policy and I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegations #1

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

The Complainant claimed that NE#2 and NE#3 were biased towards him based on the fact that he was a resident of a low-income housing building. First, as discussed above in the context of NE#1, being a resident of a low-income housing building is not a protected class for the purpose of the policy. Second, even if it was, I find no evidence that NE#2 and NE#3 engaged in bias or any other inappropriate behavior towards the Complainant. In OPA's opinion, their lack of bias is conclusively established by the Body Worn Video (BWV) of their interaction with the Complainant.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded as against both NE#2 and NE#3.

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

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

The Complainant alleged that NE#2 and NE#3 were dismissive towards his concerns and regarding what he was telling them when they responded to his call for service.



The interaction between NE#2, NE#3, and the Complainant was captured on BWV. From a review of that video, I find no evidence indicating that either officer was rude or dismissive towards the Complainant. Instead, I find that they fully listened to and evaluated what the Complainant was telling them. The officers took his statements seriously, but, at the same time, were honest with him that there was likely insufficient evidence to proceed forward with a criminal investigation. Indeed, I note that, at the conclusion of their interaction, the Complainant thanked both officers for their time and assistance.

Ultimately, I find that both NE#2 and NE#3 were professional towards the Complainant and acted consistent with policy during this incident. As such, I recommend that this allegation be Not Sustained – Unfounded as against both officers.

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

Named Employee #3 - Allegations #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 #2, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #2

5.001 - Standards and Duties 10. Employees Shall Strive to be Professional

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

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