



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 17, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0486

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 2	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Training Referral)
# 3	5.001 - Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested	Not Sustained (Training Referral)

Imposed Discipline

Oral Reprimand

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 Named Employee treated him unprofessionally, retaliated against him, and failed to provide his identifying information when requested.

ADMINISTRATIVE NOTE:

OPA initially identified four involved officers. The allegations against two of them were returned to the chain of command for handling as a Supervisor Action. The allegation against a third was referred to the OIG for investigation given a potential conflict of interest. The investigation against Named Employee #1 was handled by OPA and is discussed herein.

SUMMARY OF INVESTIGATION:

On June 8, 2020, the Complainant was biking by a school when he noticed a SWAT vehicle and SPD personnel that were staged on school property. The Complainant approached several officers, including Named Employee #1 (NE#1). The Complainant stated that he did so because he was aware that Seattle Public Schools had come out against officers using school property as staging grounds and he wanted to ask whether the officers had permission to be there. He later initiated this OPA complaint based on his belief that he was treated dismissively and rudely by NE#1 and several other officers that he interacted with. This OPA investigation ensued.



As part of its investigation, OPA interviewed the Complainant. The Complainant told OPA that one of the officers initially responded to him sarcastically, so he started recording them on his phone. The Complainant said that one of the officers was polite, but another officer – who OPA later identified as NE#1 – gave him a fictitious name when he asked for the officer’s identity. The Complainant said that the officer also said that he was not going to give the Complainant his phone number. He said that, later in their interaction, officers asked him whether his bicycle was in compliance with the law. He felt that this was unfair and retaliatory. He subsequently left the scene.

OPA reviewed the Body Worn Video (BWV) of the Complainant’s interaction with NE#1. The BWV corroborated that, when first asked for his identifying information, NE#1 responded: “Smith 1234.” This was not NE#1’s correct name or badge number. NE#1 then stated: “Sorry, what did you say? I couldn’t hear you over the helicopter.” When asked a second time, NE#1 said sarcastically: “I’m not giving you my phone number, bro.” When the Complainant again clarified that he wanted NE#1’s serial number, NE#1 provided it. Two of the other officers also interacted with the Complainant. One officer asked the Complainant what he was “after.” The Complainant said: “I’m trying to figure out why you’re here without a permit.” The officers replied that they did not need a permit. NE#1 then asked the Complainant about the reflectors on his bicycle. The Complainant then turned the lights on. NE#1 stated: “Well it wasn’t on when you arrived, so would you like your ticket mailed to you?” The Complainant responded: “I’m standing still, bro! Come on.” NE#1 then stated: “Exactly, it’s the same stuff.” After a further exchange with one of the other officers, the Complainant rode off.

OPA interviewed NE#1. He acknowledged that he was sarcastic towards the Complainant. He did not believe that his sarcasm was unprofessional, and he felt that it was appropriate given the Complainant’s antagonistic demeanor. He felt that his sarcasm could serve the purpose of making a point. NE#1 stated that he did not initially provide his identifying information to the Complainant because he felt the Complainant could be a safety risk. He believed that this was justified under policy. He eventually gave the Complainant his serial number in order to end the interaction. NE#1 said that his comment regarding the Complainant’s bicycle and the referencing of a citation was also sarcastic. He indicated that it was purposed to illuminate the “ridiculous” assertion that SPD needed a permit to stage on school grounds.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

SPD Policy 5.001-POL-10 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-10.) 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.*)

Based on a review of the BWV, OPA finds that NE#1’s conduct and statements towards the Complainant were unprofessional in a number of respects. First, NE#1’s continual sarcasm towards the Complainant was inappropriate. While the Complainant’s questioning may have felt frustrating to NE#1, the Complainant had the right to ask those questions. Moreover, NE#1, as a public servant, has the obligation to speak politely and to avoid repeated sarcasm,



even when dealing with difficult individuals. Second, NE#1's provision of the wrong name and serial number when initially asked for his identity, and then his retort that he was not going to give his phone number to the Complainant, were also inappropriate. This is the case both because NE#1 has an obligation to provide this information to the Complainant when asked and because it was juvenile and unnecessary. Third, NE#1's statement concerning the bicycle and the provision of citation, even if in jest, was improper. Indeed, it raised the specter that NE#1 was threatening to take law enforcement action against the Complainant solely because the Complainant was questioning his actions.

Given that OPA finds that the totality of NE#1's statements were unprofessional, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 14. Retaliation is prohibited

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who otherwise engages in lawful behavior." (*Id.*) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

The Complainant contended that NE#1's reference of his bicycle lights and NE#1's stating that the Complainant was going to be mailed a citation constituted retaliation for the Complainant confronting NE#1. For his part, NE#1 said that he was not being serious and that the statement was sarcastic. He stated that he had no intent to actually cite the Complainant.

Based on OPA's review of the BWV and the substance of NE#1's interview, OPA accepts NE#1's statement that he was being sarcastic when he mentioned the citation. Moreover, he did not actually take law enforcement action towards NE#1. As such, OPA concludes that NE#1 did not engage in retaliation as contemplated by SPD policy. However, this does not mean that OPA finds NE#1's statements to have been appropriate. Indeed, OPA deems them to be improper and unprofessional and they are evidence supporting the Sustained finding in Allegation #1.

With regard to the specific policy alleged here, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's chain of command should discuss this incident with him and, specifically, his comments concerning the bicycle and the possible issuance of a citation. NE#1 should be informed that, while perhaps not his intent, his plain language raised the possibility that he engaged in retaliation. He should be counseled to avoid such statements and conduct in the future. This counseling and retraining should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #3



5.001 - Standards and Duties 7. Employees Engaged in Department-Related Activities Identify Themselves When Requested

SPD Policy 5.001-POL-7 requires that employees engaged in Department-related activities must identify themselves when requested. The policy provides that officers are not required to immediately identify themselves in a few delineated circumstances, including where “there is a safety consideration.” (SPD Policy 5.001-POL-7.)

Here, NE#1 did not immediately identify himself when asked. He instead provided a false name and serial number and then sarcastically stated that he was not going to give the Complainant his phone number. It was only until the Complainant continued to ask him that NE#1 provided his serial number.

In explaining why he did not immediately provide his identifying information, NE#1 cited to the safety exception from the general disclosure rule. OPA finds this explanation to be unavailing. This exception is purposed to allow officers to not provide information where there is a legitimate threat to their safety. Here any threat was speculative at best and, in OPA’s opinion, non-existent.

As NE#1 did eventually provide his serial number, he ultimately complied with the terms of this policy. However, he should have done so immediately and without the sarcastic comments. That being said, the content of his statements is already subsumed in the Sustained finding in Allegation #1. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1’s chain of command should instruct him that he is required to provide his name and serial number when asked by a community member and that failing to do so or providing incorrect information is unacceptable. The chain of command should also discuss the inapplicability of the safety exception to this case. This counseling and retraining should be documented, and this documentation should be maintained in an appropriate database.

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