



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 21, 2020

CASE NUMBER: 2019OPA-0513

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)

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 conducted an inadequate investigation into sexual assaults perpetrated against her and asserted that this was based on the Named Employee's bias towards her.

ADMINISTRATIVE NOTE:

OPA evaluated the Complainant's allegation that the Named Employee conducted an inadequate investigation into her case based on his bias against her due to her gender and mental health status. As discussed below, OPA found that there was no evidence of biased policing. OPA further failed to discover any evidence suggesting misconduct in the Named Employee's handling of the case. From OPA's review of the Complainant's complaint and the content of her interview, it appears that her primary concern is the fact that her investigation was closed and her belief that it should be further investigated. In fact, the investigation was not closed, it was made inactive due to a lack of sufficient evidence. However, to address what OPA perceives to be the Complainant's main complaint, OPA issued a Supervisor Action to the Sexual Assault Unit chain of command and requested that investigators take another look at this case to determine whether there is any additional investigation that can be conducted, including reviewing the Complainant's medical records, that could cause the underlying crimes to be chargeable.

SUMMARY OF INVESTIGATION:

The Complainant reported to SPD that she had been raped by two coworkers. A patrol officer responded to the Complainant's location and interviewed her. The patrol officer completed a report that documented the information provided by the Complainant. The case was then routed to the Sexual Assault Unit (SAU). Named Employee #1 (NE#1), a detective in SAU, was assigned to the case. As part of his investigation into this incident, NE#1 interviewed the Complainant. He documented that she repeated information consistent with what she told the patrol officer and further explained what she had experienced. NE#1 wrote that the Complainant stated that she was raped by two men who worked with her. NE#1 noted that, while the Complainant indicated that she had several incidences of non-consensual sexual contact with the first suspect, she did not provide many "details" concerning these incidents. NE#1 also documented that the Complainant was unable to provide sufficient details concerning the non-consensual sexual contact she had with the second suspect in the summer of 2015, as well as when or why she was at the second male's home and why she returned to the home on other occasions. NE#1 wrote that the Complainant told him that she "didn't remember much of that summer."



NE#1 observed that, while she discussed these matters, the Complainant's "whole body would begin shaking." NE#1 stated that his "interpretation was that talking about the incidents was taking an emotional and psychological toll on her." NE#1 documented that he and the Complainant discussed her "memory gaps." NE#1 noted that the Complainant told him that "she would remember some things as flashes but couldn't remember any details." NE#1 also documented that he discussed available resources with the Complainant, including talking "about the value of a counselor or therapist who has specific training and experience with sexual assault victims."

NE#1 ultimately concluded that, while the Complainant was "clearly traumatized by what happened," she was "unable to remember some of the basic facts that would be needed to establish the elements of a crime." NE#1 wrote that the Complainant was planning on working with a therapist and expressed his "hope" that, "after several such sessions, she may be better able to articulate some of the details for a meaningful investigation." NE#1 proposed that the case be made "inactive pending additional details/leads." That proposal was signed off on by NE#1's Sergeant. On May 18, 2016, NE#1 wrote a supplemental report concerning medical records that were provided to him by a victim advocate. NE#1 began to review the records but determined that there was a cover letter from the Complainant's psychiatrist indicating that the records should not be disclosed. NE#1 stopped reviewing the records and added them to the file. As of the present, the case remains inactive.

On July 13, 2016, NE#1's Sergeant spoke with the Complainant. The Sergeant documented that the Complainant expressed her dissatisfaction with the handling of her case and her belief that the case was not investigated. The Sergeant wrote that she told the Complainant that the case was, in fact, investigated. The Complainant relayed to the Sergeant that NE#1 told her that it was "not a crime" but that her lawyer disagreed. The Sergeant pressed her on what crime the lawyer said occurred and documented that the Complainant grew upset by this question. The Sergeant said that she offered the Complainant additional avenues to express her concern with how the case was handled. The Sergeant wrote that the Complainant told her that she had already gone that route and that the Sergeant "would hear about it in the media." The Sergeant indicated that the Complainant then ended the call.

More than three years after NE#1 concluded his active investigation of this case, the Complainant initiated this complaint with OPA. She alleged that NE#1 did not conduct a complete and thorough investigation into the sexual assaults and that this had various negative effects on herself and her career. She told OPA that NE#1 told her that the investigation was closed and that the rape claim against the first suspect could not be proved because the first suspect said that the sex was consensual. She contended that NE#1 told her that, instead of further pursuing the case, she should "get her mental health checked." She felt that this was insensitive and insulting. She asserted her belief that NE#1's conduct was based on bias against her due to her gender and her mental health status (PTSD from the sexual assaults). NE#1 told OPA that her preferred resolution of this matter was for SPD to conduct a further review of her case. This OPA investigation ensued.

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 the race of the subject. (*See id.*)

Even if OPA agreed that NE#1 conducted an inadequate investigation in this case, which OPA does not conclude, there is no evidence supporting a finding that any of his actions were based on bias. Specifically, there is no support for the conclusion that NE#1 took or did not take certain investigatory steps because of the Complainant’s gender. Further, there is no indication that NE#1’s investigation or his decision to make the case inactive was based on the Complainant’s perceived mental health status. Lastly, while the Complainant asserted that NE#1 advised her to get mental health care and stated that she found this insulting, NE#1 documented that he hoped that she received such care in order to help her to remember more information to further the investigation of her case. Moreover, this statement would not, in and of itself, have established bias on NE#1’s part.

While OPA sympathizes with the Complainant and is sorry for what she has experienced, she has not adduced any evidence proving bias. As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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