



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 28, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0315

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	16.110 - Crisis Intervention 16.110 – POL	Allegation Removed
# 3	5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 4	5.140-POL - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)

Imposed Discipline

Oral Reprimand

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	16.110 - Crisis Intervention 16.110 – POL	Allegation Removed
# 3	5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 4	5.140-POL - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Training Referral)
# 2	15.180 - Primary Investigations 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Lawful and Proper)
# 3	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Unfounded)
# 4	16.110 - Crisis Intervention 16.110 – POL	Allegation Removed
# 5	5.140-POL - Bias-Free Policing 2. Officers Will Not Engage in Bias-Based Policing	Not Sustained (Unfounded)
# 6	5.140-POL - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing	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:

During a misconduct screening, OPA identified potential policy violations by the Named Employees when they interacted with the Subject in a manner that may have violated SPD's professionalism and bias policies.

ADMINISTRATIVE NOTE:

For the reasons discussed below (see Named Employee #3 – Allegation #1), OPA altered its finding concerning Named Employee #3's professionalism after the discipline meeting in this case.

SUMMARY OF INVESTIGATION:

On May 8, 2020, officers responded to a 911 call. The call was made by a woman (referred to below as the Mother) who requested medical assistance for her 20-year-old son – the Subject. She requested an ambulance with "police backup" because she was afraid to enter the home. She stated that the Subject had been sending her threatening text messages and that he suffered from Tourette's syndrome and ADHD. The dispatcher contacted Seattle Fire Department (SFD), which, in turn, requested that officers enter the home first to ensure safety. The dispatcher informed the Mother that officers would arrive first and secure the scene and that paramedics would follow.

At 9:58 a.m., officers arrived at the scene. Three of them – Named Employee #1 (NE#1), Named Employee #2 (NE#2), and Named Employee #3 (NE#3) – made initial contact with the Mother. She showed the officers the Subject's threatening texts, which were numerous and had been sent throughout the previous night. In general, the texts either urged the Mother to kill herself or stated that, if he "could," the Subject would do the same. The Mother informed officers that her 13-year-old daughter was in the residence and that her other son – a 17-year-old, also lived there. The Mother stated that this behavior was normal for the Subject. In her incident report, NE#3 recorded that the Mother received "100s" of texts. However, from review of BWV, it was not evident how many texts the Mother received.

The Mother also showed officers more recent messages which conveyed that the Subject had broken his ankle. She led them to the door to the residence and they went inside. NE#1 and NE#3 encountered the Subject, who was lying on the floor of the living room. NE#2 and the probationary officer went upstairs to check on the other children and brought them outside. NE#2 directed the mother to wait in the street for the ambulance and had the probationary officer stand by with her.

NE#1 and NE#3 spoke to the Subject. The Subject denied harming anyone. One of the officers told the Subject that the Mother was not happy about the texts. The Subject stated that he did not feel safe but did not explain why. NE#1 said to the Subject: "you wrote those things, right? Yeah, you did." The Subject did not reply and instead asked for the Mother. He told the officers: "stop interrogating me." NE#3 said that they were not interrogating him, while another officer said that they would not stop questioning the Subject.



NE#3 asked the Subject how he injured his ankle. The Subject replied that he did not know and then began staring fixedly at NE#3. NE#3 told him that staring at her would not stop her from questioning him. NE#1 questioned the Subject repeatedly about the text messages. The Subject did not answer the questions.

NE#3 pointed out to the Subject that he clearly understood their questions and was able to speak to them, but that “the second we bring up the texts, you act like you can’t speak.” She asked him what was going on. The Subject asked for them to “give [him] a minute.” After several seconds, NE#3 told him that “time’s up,” and that he needed to explain his behavior. The Subject asked if he was on a timer and NE#3 responded “yes, in my head.” NE#3 said that she only had limited time to investigate before SFD arrived. The Subject stated that he was not going to go to the hospital and NE#1 asked him if he would prefer jail instead. NE#3 told him to pick between jail or the hospital.

NE#2, who had by that time joined the other officers questioning the Subject, explained that the Subject’s texts constituted the crime of harassment. The Subject said “no, no, no” in a high voice. NE#1 mimicked the Subject’s vocal pattern and said “yes, yes, yes” and shouted at him to “stop crying.” NE#2 then explained that if the Subject was suffering from a mental crisis that compelled his threatening texts, he would have to be taken to the hospital. NE#2 stated that “if you’re just going to play the five-year-old card and not answer questions,” the officers would make decisions for the Subject. He then left.

The Subject stated that the officers were “lying.” NE#3 replied that it was the Subject and not she who was lying. She then explained the next steps in the officers’ investigation, including potential detention. The Subject stated that this was “illegal” and began to cry. The Mother entered the residence and attempted to calm him down. The Subject said that the officers were alleging he “wanted drugs or something.” At this point, paramedics arrived and began checking the Subject for injuries.

NE#2 and NE#3 spoke to the Mother outside the residence. NE#2 explained that the nature and number of the texts constituted the crime of domestic violence harassment. He said that the Subject’s behavior was unacceptable and that he needed to “clean up his act.” NE#2 said that the Subject’s refusal to cooperate in discussing the texts meant that the Subject understood that his conduct was wrongful. Somewhat later, NE#2 asked the Mother if he had been arrested before, and when she said no, he stated that “maybe that’s what he needs.”

NE#3 reentered the residence. As she did, her BWV recorded the Subject shouting that officers were “fucking with me ‘cause I have Tourette’s Syndrome...you’re lying your asses off and you’re abusing your fucking badge!” After he made this statement the paramedics removed the Subject from the residence. None of the Named Employees reported this statement at the time or in their subsequent reports.

OPA interviewed the Named Employees. NE#1 verified that he had received 40 hours of crisis training, which is intended to assist officers in differentiating willful behaviors from those caused by mental crisis. He had been informed by the Mother that the Subject had Tourette’s. NE#1 stated that in his assessment, the Subject was not in acute mental crisis because the Mother said that he always behaved in that manner. NE#1 opined that the Subject’s behavior was “enabled” by the Mother and that he wanted to hold the Subject accountable for his actions. He stated that he did not intend to mock the Subject, but that he believed the Subject was manipulating the situation. He conceded that his tactics may not have been the best, but said they were not unprofessional.

NE#2 stated that he had likewise received 40-hour CIT training and was aware of the Subject’s Tourette’s. He said that it did not impact his handling of the call. He stated that his primary goal was initially to remove the other children



from the residence. NE#2 said that when he told the Subject he could be taken to the hospital or jail, he was trying to advise the Subject of the probable outcomes of the call. When asked whether he believed the Subject was in crisis, NE#2 said no. He stated that while the Subject was “behaviorally rude,” he responded to officers’ questions in a coherent manner and understood what was happening throughout the call. Finally, he stated that he did not at the time believe that the Subject was making a bias complaint when he said the officers were lying and targeting him because of Tourette’s. He stated that neither he nor the other officers took enforcement action because of the Subject’s Tourette’s, but rather because he would not explain the threatening texts.

NE#3 also holds a 40-hour CIT certification and was aware of the Subject’s Tourette’s. She stated that she did not base her handling of the call on her awareness that the Subject had a mental condition. Rather, she stated that the Subject’s immediate and sustained hostility to officers led her to decide that she needed to control the scene. She likewise stated that the Subject was being “manipulative” and using his Tourette’s diagnosis as license to make threats. NE#3 noted that the Mother told her and other officers that the Subject’s behavior was normal for him, which is inconsistent with an individual in acute mental crisis. With respect to allegations that she falsely accused the Subject of sending harassing texts, NE#3 stated that she observed numerous texts on the Mother’s phone and that the number and nature of the texts led her to believe he had committed the crime of harassment. She was not certain how many texts she viewed but noted that the Mother was able to scroll continuously through the harassing texts. NE#3 stated that she requested the Mother submit the texts as evidence but that the Mother declined.

On May 22, the Subject called to report that the Named Employees lied about his threatening behavior and that this lie caused him to lose his apartment. A sergeant responded and spoke with the Subject at his home. The sergeant screened the alleged misconduct with OPA. This investigation ensued.

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.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (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.*)

OPA’s review of the BWV yields the conclusion that NE#1’s interaction with the Subject was both escalating and unprofessional. First, OPA finds that NE#1’s mimicking of the Subject’s tone of voice served no legitimate law enforcement purpose and did nothing other than to agitate the Subject. Indeed, it seemed to make it less likely that the interaction would have a productive result. Second, NE#1 used terms and a tone of voice that seemed to OPA to be overly argumentative and, at times, dismissive. For example, NE#1 told the Subject at one point to “stop crying” and, at another point, said: “does that work with your mom? Just give her the evil eye?” Again, as with the mimicking of the Subject’s voice, this is not consistent with how officers are trained to interact with the public, even when they are dealing with a difficult person. Third, telling the Mother that maybe her son “needed” to be arrested,



while perhaps not unprofessional standing alone, demonstrated a lack of empathy for what she was experiencing and the potential duality that, even though she called for help, she did not want her son to go to jail.

Ultimately, OPA finds that the totality of NE#1's statements and approach were unprofessional and unnecessarily escalated this incident. As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

16.110 - Crisis Intervention 16.110 – POL

SPD Policy 16.110 provides general guidance concerning crisis intervention. SPD Policy 16.110-POL-5 instructs officers on how to respond to subjects who are in behavioral crisis. SPD Policy 16.110-PRO-2 sets forth further information on this issue.

Based on OPA's review of the totality of the evidence, it is not clear that the Subject was actually experiencing a mental health crisis at the time of the incident. Notably, the Mother stated that this was the Subject's baseline behavior, he was able to follow and respond to the officers' questions, and he seemed oriented and not overly dysregulated. Moreover, the officers did not appear to believe that the Subject was in crisis at any time and medical assistance was called for his ankle injury, not because an involuntary detention was anticipated. As such, even though OPA finds that all of the officers did not optimally handle this situation, their conduct is better captured by the policy concerning professionalism.

As such, OPA recommends that this allegation be removed as against all of the Named Employees.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #3

5.140-POL - 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-POL.) This includes different treatment based on the mental condition of the subject. (See *id.*)

When evaluating the record, there is no evidentiary support for the conclusion that the Named Employees engaged in biased policing during this incident. Most notably, the video is clear that the Named Employees' actions and decision-making was based on their review of the texts, their discussions with the Mother, and the Subject's behavior. That the Subject suffered from Tourette's did not appear to play any role in how they handled the call.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against all of the Named Employees.

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



Named Employee #1 - Allegation #4

5.140-POL - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

SPD Policy 5.140-POL-5 requires employees to call a supervisor in response to allegations of biased policing. This includes providing sufficient information to the supervisor to allow a determination as to what occurred and what the nature of the bias allegation is. (SPD Policy 5.140-POL-5.)

While OPA concludes that the Named Employees did not engage in biased policing, OPA finds that they should still have summoned a supervisor to the scene based on the Subject's claims that he was being mistreated because of his Tourette's. Under SPD policy, a claim that a person is being mistreated because of a disability and/or mental health condition represents an allegation of bias. Even if the Named Employees were unsure about whether Tourette's fell within these categories, they should have called a supervisor to the scene or, at the very least, screened the Subject's comments with a supervisor.

In OPA's perspective, this failure does not warrant discipline. This conclusion is based both on the Named Employees' good faith misunderstanding, the absence of explicit language covering medical conditions – such as Tourette's – within the policy, and the lack of similar discipline in the past for these officers. Instead, OPA recommends that they receive the below Training Referral.

- **Training Referral:** The Named Employees' chains of command should discuss this incident with the Named Employees and go over what constitutes an allegation of bias and when a supervisor should be notified. This training and any counseling should be documented, and that documentation retained in an appropriate database.

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

Named Employee #2 - Allegation #1

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

Like NE#1, NE#2 told the Mother that jail might be appropriate for the Subject. Specifically, he told her that the Subject needed to "clean up his act" and that jail might teach him a required lesson. The Mother later told OPA that she found these statements to be unprofessional.

As discussed in the context of NE#1, OPA finds that this statement was misplaced under the circumstances. However, unlike NE#1, NE#2 only made one such statement and did not engage in other dismissive or rude behavior towards the Subject or the Mother. As such, OPA recommends that he receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#2 should be reminded of the obligation that he remain professional during his interactions with the community. He should be instructed that further unprofessional statements and behavior may result in OPA investigations and the imposition of discipline. This counseling and any retraining should be documented, and this documentation should be maintained in an appropriate database.

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



Named Employee #2 - Allegation #2

16.110 - Crisis Intervention 16.110 – POL

For the same reasons as above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #3

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

For the same reasons as above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #4

5.140-POL - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

For the same reasons as above (see Named Employee #1 – Allegation #4), OPA recommends that this allegation be Not Sustained – Training Referral.

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

Named Employee #3 - Allegation #1

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

NE#3's interaction with the Subject raised many of the same concerns as NE#1's. At times, she spoke dismissively and rudely to the Subject and interacted with him in an aggressive and antagonistic manner. This included asking questions in a repetitious manner akin to an interrogation, telling the Subject that he had to choose between the hospital and jail when he was not required to go to the hospital, and unnecessarily speeding up the interaction, including telling the Subject that she was using a clock in her head to calculate how much more time she was going to spend interacting with him.

At the discipline meeting for this case, the chain of command raised concerns with the finding that NE#3 was unprofessional. While they perceived her interaction with the Subject to be suboptimal, they felt that it was not as egregious as NE#1's conduct. They posited that, given NE#3's lack of a history of prior unprofessional conduct, a Training Referral would be the better course of action.

After re-reviewing the video, OPA agrees that NE#3's statements and conduct did not reach the same level as NE#1's. OPA maintains the belief that she handled this situation poorly but recognizes, as the chain of command identified, that she has not been previously disciplined for professionalism. Given this, OPA agrees that a reversal of its prior Sustained finding is warranted. However, OPA wants to be abundantly clear that similar conduct in a future



case will result in a finding that the professionalism policy was violated and OPA's recommendation that discipline be imposed.

- **Training Referral:** NE#3 should be reminded of the obligation that she remains professional during her interactions with the community. This should include her chain of command watching the video of this incident with her. She should be instructed that further unprofessional statements and behavior may result in OPA investigations and the imposition of discipline. This counseling and any retraining should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #3 - 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.

OPA finds sufficient evidence to show that NE#3 had a basis to believe that the Subject indeed threatened his mother and, in so doing, developed probable cause for the crime of telephone harassment. The Mother produced evidence in the form of texts which NE#3 had the opportunity to view. While OPA notes that NE#3's incident report was somewhat imprecise as to the number of texts she viewed, that information was not material to the outcome of the call or to her investigation. Moreover, her use of "100s" when describing the texts rather than a more accurate number did not render her report of the incident materially inaccurate or deceptive.

Lastly, the recitation of the events that NE#3 set forth in her report accurately conveyed what she observed at the scene. There is no basis to include that she improperly recounted the evidence or misstated the nature of the incident.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #3 - Allegation #3

5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete In All Communication

The Complainant alleged that NE#3 was dishonest when she asserted that he sent threatening texts. If true, this would have constituted dishonesty, which is prohibited by SPD Policy 5.001-POL-11.

As discussed above, OPA's review of the BWV indicated that NE#3 accurately recounted the evidence, including that the Subject sent threatening texts. There is no basis to conclude that she was dishonest in any respect. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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



Named Employee #3 - Allegation #4

16.110 - Crisis Intervention 16.110 – POL

For the same reasons as above (see Named Employee #1, Allegation #2), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #3 - Allegation #5

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

For the same reasons as above (see Named Employee #1, Allegation #3), OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #3 - Allegation #6

5.140-POL - Bias-Free Policing 5. Employees Will Call a Supervisor in Response to Allegations of Bias-Based Policing

OPA recommends that this allegation be Not Sustained and refers to the above Training Referral (see Named Employee #1 – Allegation #4).

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