



## CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 19, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0104

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	15.180 – Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained (Lawful and Proper)
# 2	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	15.180 – Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained (Lawful and Proper)
# 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	5.001 – Standards and Duties 6. Employees May Use Discretion	Not Sustained (Lawful and Proper)
# 2	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

**Named Employee #4**

Allegation(s):		Director’s Findings
# 1	5.001 – Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

***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 and Named Employee #2 failed to properly investigate a crime, including failing to interview a witness and search for the suspect. The Complainant further alleged that Named Employee #3 did not properly handle his concerns with a 911 call taker and was unprofessional, as well as that Named Employee #4 acted unprofessionally towards him.



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**SUMMARY OF INVESTIGATION:**

On February 22, 2021, the Complainant submitted two voicemail complaints to OPA. The Complainant stated that he made eight phone calls to 911 relating to a fire in a nearby tent encampment. He alleged that a 911 call taker – later identified as Named Employee #4 (NE#4) – was unprofessional and advised the Complainant to “talk to the politicians” if he was unsatisfied with the speed of the police response. In his voicemail complaint, the Complainant also stated that the officers who arrived on scene did not conduct a thorough investigation and left the scene without looking for possible suspects.

On March 10, 2021, the Complainant provided OPA with additional details regarding his complaint, stating that NE#4 was on the third call he had made to 911 on February 22, 2021. He went on to indicate that he received a call back from a Communications Section supervisor – later identified as Name Employee #3 (NE#3) – approximately two minutes after speaking with NE#4. The Complainant said that he found NE#3’s conduct to be unprofessional, as she was not willing to document the call as an “arson” due to the Complainant not being the victim of a crime. Additionally, the Complainant asserted that NE#3 provided him with information that was not germane to the underlying issue.

Regarding the officers who responded to the scene – Named Employee #1 (NE#1) and Named Employee #2 (NE#2), the Complainant stated that he found their conduct unprofessional as they spent too much time talking to him and not enough time investigating the incident. Additionally, the Complainant noted that NE#1 and NE#2 did not take the Complainant’s strategic advice seriously, and they also did not appear to appreciate the Complainant’s expressed security concerns. Lastly, the Complainant alleged that the officers left the scene before speaking with a potential witness, whom he described as a “transgender” woman with “cyan” hair.

Based on this complaint, OPA commenced its investigation. OPA reviewed 911 call records, CAD Call records, and Body Worn Video (BWV). Additionally, OPA spoke to the Complainant, and reviewed photographs taken at the scene by responding officers.

Call records show that on February 22, 2021, at approximately 3:47 AM, 911 received several calls regarding a tent fire in Thomas Street Park. In response to these calls, Seattle Fire Department (SFD) and SPD officers travelled to the scene and SFD personnel managed to put out the fire. BWV showed that an SFD captain on the scene indicated to SPD that the fire did not appear to be caused by arson. The SFD captain indicated that, due to high wind that evening, it was likely that an open flame inside the tent had gotten out of control and that this caused the fire. BWV also indicated that SPD officers took photographs of the burned tent and spoke to one potential witness who told the officers that she did not see what had happened.

Later that day, at 1:43 PM, the Complainant called 911 to report an “arson” that took place at Thomas Street Park. The Complainant called again at 1:45 PM and 1:53 PM. 911 call records also show that each of these three calls were answered by different call takers. According to the CAD Call Log, NE#4 was the operator on the next call between the Complainant and SPD at 2:01 PM. The call was placed through the call center’s business phone and was not recorded. Call records further indicated that, at 2:04 PM, NE#3 placed a call to the Complainant’s number. The records showed that, during the call, the Complainant told NE#3 that the police weren’t doing their jobs and that one of her “direct reports” told him to “talk to the politicians about why they’re not coming by to do their jobs.” When the Complainant was asked about whether he was the victim of the arson, he stated that he was not. NE#3 went on to state that, unless the victim contacted the police, officers would be unable to respond to the Complainant’s report of an arson. The



records show that, during the call, the Complainant spoke in an expletive-laced manner, refused to answer NE#3's queries, and responded to her in a condescending manner.

Later that evening, at approximately 7:55 PM, NE#1 and NE#2 responded to the Complainant's calls and arrived on the scene. BWV showed that NE#1 and NE#2 encountered the Complainant, who immediately expressed hostility regarding the police response. In addition, the BWV indicated that, when NE#1 and NE#2 attempted to obtain foundational information from the Complainant, the Complainant regularly spoke over the officers and told them what they should be doing. Indeed, the Complainant continued to express criticism of their strategy during their time on the scene.

During the response, the Complainant stated that an individual with "cyan" hair was on the scene at the time of the incident. The BWV confirmed that, upon going to Thomas Street Park to investigate, NE#1 encountered an individual who had blue hair. This witness stated that she did not see what happened and then requested some sort of housing service. NE#1 went on to photograph the burned tent location, after which he reported no signs of human remains or of a struggle having occurred. The officers then confirmed the safety of the scene making sure that no individuals were in danger and left shortly thereafter.

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

##### **Named Employee #1 - Allegation #1**

##### ***15.180 – Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence***

SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence. The policy further requires officers to collect evidence and states that only evidence that it impractical to collect shall be retained by the owner. (SPD Policy 15.180-POL-1.) Such evidence should be photographed. (*Id.*)

Here, OPA's review of the officers' BWV contradicts the Complainant's assertion that they violated this policy. Indeed, the BWV showed that the officers attempted to obtain foundational information from the Complainant related to the incident. The video further showed that the officers went to Thomas Street Park to investigate the scene, took photographs of the burned tent location, and talked to an individual at the scene that best matched the description of the potential witness provided by the Complainant. OPA found no evidence that NE#1 and NE#2 either failed to conduct a thorough and complete search for evidence or to collect it as required by this policy.

Accordingly, OPA recommends that this allegation be Not Sustained – Lawful and Proper as against both NE#1 and NE#2.

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

##### **Named Employee #1 - Allegation #2**

##### ***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



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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.*)

Again, as with Allegation #1, the BWV disproves that NE#1 and NE#2 violated the Department’s professionalism policy. OPA found no evidence that NE#1 and NE#2 conducted themselves in an unprofessional manner towards the Complainant or that they used any language in his presence that was contemptuous, disrespectful, or derogatory. Moreover, to the extent the Complainant’s argument is that the officers’ investigation constituted unprofessional conduct, OPA finds that this lacks merit given the findings above.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

**Named Employee #2 - Allegation #1**

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

For the same reasons as stated above (*see* Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Lawful and Proper.

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

**Named Employee #2 - Allegation #2**

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

For the same reasons as stated above (*see* Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #3 - Allegation #1**

***5.001 – Standards and Duties 6. Employees May Use Discretion***

As indicated in SPD Policy 5.001-POL-6, “[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment.” This policy further states that “[D]iscretion is proportional to the severity of the crime or public safety issue being addressed.” (SPD Policy 5.001-POL-6.)

OPA believes that NE#3 exercised appropriate discretion in her handling of this incident and her statement to NE#3 that officers would not be responding to the alleged arson unless a victim called. This was based both on SPD’s limited resources and the fact that NE#1, NE#2, and SFD personnel had all previously investigated this incident and deemed it not to be arson.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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



**Named Employee #3 - Allegation #2**

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

Based on a review of the 911 call, OPA believes that NE#3 acted professionally during her interaction with the Complainant. While she did not ultimately do what he wanted, this did not cause her actions to be inappropriate. Indeed, as discussed above, OPA finds that she appropriately exercised her discretion during this incident.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

**Named Employee #4 - Allegation #1**

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

As discussed above, the call between the Complainant and NE#4 was not made on a recorded line. Accordingly, there is no audio capturing what was said. This precludes OPA from reaching a definitive determination as to whether NE#4's statements to the Complainant violated SPD's professionalism policy.

For this reason, OPA recommends that this allegation be Not Sustained – Inconclusive.

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