



## ***CLOSED CASE SUMMARY***

ISSUED DATE: MARCH 13, 2023

FROM: DIRECTOR GINO BETTS   
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0310

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

#### **Named Employee #1**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties, 5.001-POL-10 Employees Will Strive to Be Professional	Not Sustained - Inconclusive
# 2	15.180 - Primary Investigations, 15.180-POL-1 Officer Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Training Referral

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	15.020 - Charge-By-Officer (CBO), 15.020-POL-5 Supervisors Shall Review CBO Reports and Apply the CBO Label	Not Sustained - Unfounded

#### **Named Employee #3**

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties, 5.001-POL-10 Employees Will Strive to Be Professional	Not Sustained - Inconclusive
# 2	15.180 - Primary Investigations, 15.180-POL-1 Officer Shall Conduct a Thorough and Complete Search for Evidence	Not Sustained - Training Referral
# 3	15.180 - Primary Investigations, 15.180-POL-5 Officers Shall Document all Primary Investigations on a Report	Not Sustained - Training Referral
# 4	15.020 - Charge-By-Officer (CBO), 15.020-POL-2 Suspects Must Be Thoroughly Identified and Documented in the Report	Not Sustained - Unfounded

#### **Named Employee #4**

Allegation(s):		Director's Findings
# 1	15.020 - Charge-By-Officer (CBO), 15.020-POL-2 Suspects Must Be Thoroughly Identified and Documented in the Report	Not Sustained - Inconclusive
# 2	15.020 - Charge-By-Officer (CBO), 15.020-POL-2 Suspects Must Be Thoroughly Identified and Documented in the Report	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.***



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**EXECUTIVE SUMMARY:**

The Complainant alleged Named Employee #1 (NE#1) and Named Employee #3 (NE#3) failed to investigate his assault, mishandled the case, and acted disinterested in his report. It was also alleged Named Employee #2 (NE#2), a supervisor, failed to review a Charge-by-Officer (CBO)<sup>1</sup> report and apply the proper label.

Further, the Complainant alleged Named Employee #4 (NE#4), an unknown employee, dismissed his report about prior assaults and inadequately investigated those allegations.

**SUMMARY OF INVESTIGATION:**

The Complainant emailed and called OPA. He alleged his neighbor (Community Member #1 or CM#1) struck his head with an “unknown object,” which left him concussed. The Complainant alleged CM#1 assaulted him three times. The Complainant also stated he was a “brain injury survivor.” The Complainant alleged SPD mishandled the case, and the “[City Attorney’s Office] said they weren’t pressing charges because the prisons are full.” The Complainant also alleged SPD ignored prior reports of CM#1 assaulting him: “...the police never came to my assistance or called me back.”

OPA opened an investigation. During its investigation, OPA reviewed the complaint, Computer-Aided Dispatch (CAD) data, Seattle City Attorney’s Office declination, incident report, body-worn video (BWV), and in-car video (ICV). OPA also interviewed the Complainant and the identified Named Employees.

*a. SPD Documentation & SCAO Declination*

The CAD call report showed the Complainant called 9-1-1 to report being “hit in the back of the head by [a] neighbor.” It noted the Complainant provided the offender’s name and description and that the situation was “ongoing.” CAD call remarks also noted the responding officers were directed to meet the Complainant at Swedish First Hill Hospital. NE#1 and NE#3 responded.

NE#3 was the primary officer and wrote the associated incident report. NE#2 approved that incident report. NE#3 wrote he was dispatched to Swedish First Hill Hospital for an assault, and on arrival, a social worker told him the Complainant visited the emergency room claiming the back of his head was struck. NE#3 wrote the social worker stated the injury was “minor” and there “was no significant swelling.”

NE#3 wrote he contacted the Complainant, who described “several issues with a neighbor,” CM#1. NE#3 documented the Complainant provided CM#1’s name and description. That description included approximate age, height, weight, race, and hairstyle.

NE#3 also documented the Complainant’s description of the incident. NE#3 wrote, according to the Complainant, CM#1 approached the Complainant from behind in a hallway and “struck him in the back of the head.” NE#3 wrote

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<sup>1</sup> The Charge-By-Officer (CBO) program is used by patrol officers and sergeants to “refer completed misdemeanor investigations (a preliminary investigation which has been finished with the available on-scene resources and requires no detective follow-up) to the Seattle Law Department.” SPD Policy 15.020.



the Complainant stated he was “unsure what he was struck with,” but it caused him to fall. NE#3 documented the Complainant’s reported prior traumatic brain injury. NE#3 wrote the Complainant “stated that he fears that if he goes home, he will be assaulted again.”

NE#3 wrote:

*I tried contacting the Apartment complex where the incident occurred at to inquire about video footage. I spoke with the front desk employee who stated that I need to contact them during daytime business hours.*

NE#3 photographed the Complainant’s injuries, which NE#3 described as “minor swelling to the back of the head.”

NE#3’s report noted the case was assigned to “Homicide/Assault,” and the investigative status noted, “referred to City Attorney.”

The Seattle City Attorney’s Office’s declination notice stated: “The suspect is insufficiently identified for charging. The date of birth is unknown, there is no middle name or initial, the first name and surname are common, and there is no address.”

*b. Body Worn Video and In-Car Video*

There is no BWV of NE#1’s or NE#3’s interaction with the Complainant because it occurred inside a hospital. See SPD Policy 16.090-POL-1(5)(d) (“Employees will not record in . . . the interiors of medical . . . facilities.”). NE#1 and NE#3’s BWV showed each arriving at the hospital and deactivating their BWV before entering the building.

NE#1 and NE#3 were partners. Their ICV recorded them reentering the car after leaving the hospital. Although it is unclear which officer made which statements, ICV captured the following:

- “See if anyone had video.”
- “I think that’s reasonable. What do you think you didn’t ask about?”
- “He said he had a witness.”
- “Oh, the witness info.”

*c. OPA Interview – Complainant*

OPA interviewed the Complainant, who reported ongoing problems with CM#1. The Complainant stated he made several police reports, but nothing was done. The Complainant explained that when he said SPD mishandled his case, he meant the overall situation with CM#1, not NE#1 and NE#3. The Complainant stated NE#1 and NE#3 were not rude but acted uninterested. The Complainant said he was told the jails were full and that the prosecutor’s office would not do anything.

*d. OPA Interview – Named Employee #1*

OPA interviewed NE#1. NE#1 stated he worked at SPD since January 2021.



NE#1 recalled he partnered with NE#3, the primary officer, for the call. NE#1 recalled hospital staff telling them the Complainant had a head injury from an alleged assault. NE#1 recalled the Complainant providing the offender's name but stated he and NE#3 "didn't really find anybody with that name," and they "couldn't contact anybody at the building that night to see if [that] person [lived there]." NE#1 stated he and NE#3 unsuccessfully ran CM#1's name in SPD computer systems. NE#1 recalled going to the Complainant's apartment building after the hospital, but it was a "lock-out building," making entering challenging. NE#1 described the apartment building as "multiple floors" with an elevator and "maybe twenty apartments on each floor."

NE#1 stated the Complainant was "upset that he just got assaulted" and noted the Complainant wanted CM#1 arrested. NE#1 stated he thought the Complainant "seemed to get it" even if he "[didn't] like it." NE#1 said he and NE#3 told the Complainant they could not arrest without further investigation.

NE#1 did not recall telling the Complainant the jails were full or that the "prosecutor wouldn't do anything anyway." Instead, NE#1 stated he told the Complainant if they located CM#1, they might have to "CBO him."

OPA asked NE#1 about the ICV recorded conversation about not getting a witness's information. OPA asked NE#1 why he or NE#3 did not return to the hospital to get that information. NE#1 responded, "I don't know."

NE#1 stated had he and NE#3 found sufficient evidence, they would have filed the case as a CBO. NE#1 said NE#3 wrote a report and sent it to a follow-up unit for further investigation.

*e. OPA Interview – Named Employee #2*

OPA interviewed NE#2, the supervisor who approved NE#3's incident report. NE#2 stated he worked at SPD for about seven and a half years.

NE#2 denied routing the incident report through the CBO program. NE#2 described the usual process for sending a case through the CBO program and noted NE#3's incident report did not include "specific verbiage from policy" requesting charges. NE#2 stated rather than labeling the case for the CBO program; he sent it for Homicide/Assault Unit follow-up.

NE#2 also stated, according to NE#3's report, it appeared NE#1 and NE#3 tried to speak with someone at the building "who said they needed to contact him during daytime business hours." NE#2 stated NE#1 and NE#3 did not work daytime hours, "which makes it hard to contact during business hours because that's literally outside of our working time."

Finally, NE#2 characterized the officers' investigation stating, "we have a lot of calls to get to; we're understaffed. I think that the officers actually did a decent amount of investigation based on what they had."

*f. OPA Interview – Named Employee #3*



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OPA interviewed NE#3, who stated he worked at SPD for “a little over a year and a half.”

NE#3 recalled partnering with NE#1 for the call. NE#3 stated he contacted the Complainant inside the hospital, and the Complainant said he was struck in the back of the head. NE#3 described the suspect as “emotional” but “pretty civil to us.” NE#3 recalled being professional with the Complainant while gathering evidence about the assault, including information about the suspect. NE#3 also recalled speaking with a social worker who stated there was “no injury to the back of [the Complainant’s] head, and there is no, like, significant swelling.”

NE#3 stated he did not recall whether either officer mentioned staffing issues to the Complainant or said the prosecutor would not prosecute the case.

NE#3 did not recall asking the Complainant to describe where CM#1 lived in the building. NE#3 reviewed his incident report and recalled only having CM#1’s name but no birthdate. NE#3 recalled using Mark 43, an SPD computer system, to attempt to identify CM#1, but that was unsuccessful.

OPA asked NE#3 about the discussion captured on ICV concerning the witness. OPA asked NE#3 why he did not return to the hospital to get the witness information from the Complainant. NE#3 responded, “I don’t know.”

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

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

##### ***5.001 - Standards and Duties, 5.001-POL-10 Employees Will Strive to Be Professional***

The Complainant alleged NE#1 and NE#3 were unprofessional by acting disinterested in his allegations.

SPD employees must “strive to be professional.” SPD Policy 5.001-POL-10. Further, “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers,” whether on or off duty. *Id.*

Here, the Complainant alleged NE#1 and NE#3 acted uninterested in his report, including telling him the jails were full and the prosecutor’s office would not do anything about it. The Complainant also noted neither officer was rude. NE#3 did not recall that conversation with the Complainant, but NE#1 characterized it as the officers explaining their limitations. NE#1 recalled the Complainant was upset and wanted CM#1 arrested. NE#1 stated he explained further investigation was necessary before an arrest. NE#1 also recalled telling the Complainant CM#1 may ultimately receive a CBO rather than be arrested.

Without the benefit of BWV or other objective evidence, OPA cannot conclude whether NE#1 or NE#3 were unprofessional during their conversation with the Complainant or merely described the misdemeanor process and its challenges.

Accordingly, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**



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

***15.180 - Primary Investigations, 15.180-POL-1 Officer Shall Conduct a Thorough and Complete Search for Evidence***

The Complainant alleged NE#1 and NE#3 failed to conduct a complete and thorough search for evidence.

A primary investigation requires a thorough and complete search for evidence. SPD Policy 15.180-POL-1.

NE#1 and NE#3 spoke to the Complainant, photographed his injuries, documented his allegation, and gathered CM#1's name and description. They also visited the Complainant's building and contacted building staff but could not enter it due to the time of day. Overall, NE#1 and NE#3 gathered some evidence relevant to the alleged crime and reasonably tried to access the Complainant's building.

However, their failure to gather information about a witness the Complainant referenced is notable. Both officers knew about that oversight when they returned to their patrol car, yet neither followed up with the Complainant, which fell short of Department expectations. Moreover, NE#3 failed to document the Complainant's witness reference in the incident report.

OPA also notes the officers' relative inexperience, lack of prior discipline for a similar allegation, and the fact the investigation was sent to a follow-up unit that—had they chosen to investigate this matter—would have presumably learned about the referenced witness. Overall, OPA finds this omission constituted a possible policy violation that did not rise to serious misconduct.

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's and NE#3's chain of command should discuss OPA's findings with them, review SPD Policy 15.180-POL-1 with both officers and 15.180-POL-5 with NE#3, and provide any retraining and/or counseling it deems appropriate. The retraining and counseling conducted should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

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

***15.020 - Charge-By-Officer (CBO), 15.020-POL-5 Supervisors Shall Review CBO Reports and Apply the CBO Label***

It was alleged NE#2 inadequately reviewed NE#3's incident report and applied the CBO label without the required information.

SPD Policy 15.020-POL-5 requires supervisors to review a CBO report and apply the CBO label. SPD Policy 15.020-POL-5. That policy refers supervisors to SPD Policy 15.020-PRO-1. *Id.*

As NE#2 explained and the incident report showed, NE#2 did not label this case for the CBO program but routed it to the Homicide/Assault Unit for follow-up. However, it appears the case was routed to the City Attorney's Office—without any follow-up— and declined for not comporting with CBO program requirements. NE#2 was not responsible for that misclassification.



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

Recommended Finding: **Not Sustained - Unfounded**

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

***5.001 - Standards and Duties, 5.001-POL-10 Employees Will Strive to Be Professional***

For the reasons above at Named Employee #1 - Allegation #1, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**

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

***15.180 - Primary Investigations, 15.180-POL-1 Officer Shall Conduct a Thorough and Complete Search for Evidence***

For the reasons above at Named Employee #1 - Allegation #2, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1's and NE#3's chain of command should discuss OPA's findings with them, review SPD Policy 15.180-POL-1 with both officers and 15.180-POL-5 with NE#3, and provide any retraining and/or counseling it deems appropriate. The retraining and/or counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

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

***15.180 - Primary Investigations, 15.180-POL-5 Officers Shall Document all Primary Investigations on a Report***

It was alleged NE#3 failed to document the suspect's identifying information, information about a possible witness, the manner of contacting the apartment building staff, and any additional efforts to identify the suspect.

SPD Policy 15.180-POL-5 requires officers to document all primary investigations on a report. All reports must be complete, thorough, and accurate. See SPD Policy 15.180-POL-5.

Here, NE#3's incident report could have included greater details like where CM#1 lived in the building, how NE#3 contacted the apartment building's staff, and their unsuccessful attempts to identify CM#1 in Mark 43 and CAD. However, those omissions were not dispositive for their primary investigation.

The same cannot be said about failing to document the putative witness. That information could have swayed the prosecutor concerning the viability of an assault charge and should have been documented. However, for the same reasons articulated above at Named Employee #1 - Allegation #2, OPA recommends this be Not Sustained -Training Referral.

- **Training Referral:** NE#1's and NE#3's chain of command should discuss OPA's findings with them, review SPD Policy 15.180-POL-1 with both officers and 15.180-POL-5 with NE#3, and provide any retraining and/or



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counseling it deems appropriate. The retraining and/or counseling should be documented and maintained in Blue Team.

Recommended Finding: **Not Sustained - Training Referral**

**Named Employee #3 - Allegation #4**

***15.020 - Charge-By-Officer (CBO), 15.020-POL-2 Suspects Must Be Thoroughly Identified and Documented in the Report***

It was alleged NE#3 insufficiently identified CM#1 for the CBO program.

SPD Policy 15.020 is generally concerned with the process and procedures concerning the charge-by-officer program, which allows officers to refer a completed misdemeanor investigation directly to the Seattle City Attorney's Office. SPD Policy 15.020-POL-2 requires explicitly that "suspects must be thoroughly identified and documented in the general offense report." The policy explains that the City Attorney's Office will not charge the offense if a suspect's identity is incomplete. SPD Policy 15.020-POL-2.

As discussed at Named Employee #2 - Allegation #1, this case was not completed or labeled for the CBO program. Instead, after NE#2 routed it to the Homicide/Assault Unit, this case was sent to the City Attorney's Office without follow-up and declined. NE#3 was not responsible for that miscommunication.

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

Recommended Finding: **Not Sustained - Unfounded**

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

***5.001 - Standards and Duties, 5.001-POL-10 Employees Will Strive to Be Professional***

The Complainant alleged NE#4, an unknown employee, dismissed prior reports about CM#1.

The Complainant did not specify which prior reports he thought SPD mishandled, and NE#3 was the only officer he identified. With limited information, OPA cannot conclude whether any officer was dismissive towards the Complainant.

Accordingly, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**

**Named Employee #4 - Allegation #2**

***15.180 - Primary Investigations, 15.180-POL-1 Officer Shall Conduct a Thorough and Complete Search for Evidence***

The Complainant alleged NE#4, an unknown employee, failed to adequately investigate prior incidents by failing to respond to the scene or call the Complainant back.





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For the reasons above at Named Employee #4 - Allegation #1, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**