



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 11, 2018

CASE NUMBER: 2017OPA-0980

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	7.010 - Submitting Evidence 1. Employees Secure Collected Evidence	Sustained
# 2	8.400-TSK-13 Use of Force - RESPONSIBILITIES OF THE FIT CASE DETECTIVE DURING A TYPE III INVESTIGATION (FIREARMS DISCHARGE)	Not Sustained (Management Action)
# 3	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (FIT MANUAL)	Not Sustained (Management Action)

Imposed Discipline

1 Day Suspension

Named Employee #2

Allegation(s):		Director’s Findings
# 1	8.400-TSK-15 Use of Force - RESPONSIBILITIES OF THE FIT UNIT SERGEANT DURING A TYPE III INVESTIGATION (FIREARMS DISCHARGE)	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (FIT MANUAL)	Not Sustained (Management Action)
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations	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, the former Captain of SPD’s Force Investigation Team, alleged that Named Employee #1 improperly stored evidence in his personal locker for an extended period of time, and that Named Employee #2 failed to properly supervise him and failed to report the misconduct. The Complainant further alleged the Named Employee #3 also failed to report the misconduct.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

7.010 - Submitting Evidence 1. Employees Secure Collected Evidence

SPD Policy 7.010-POL-1 requires that employees secure collected evidence. It further instructs employees that they must place that evidence into the Evidence Unit or an authorized evidence storage area before they end their shift.

There is no dispute that Named Employee #1 (NE#1) failed to submit the firearms that were used during a fatal officer-involved shooting into the Evidence Unit. The fundamental question in this case is whether he, by storing the firearms in a cardboard box that he kept in a locked desk drawer in his personal office, secured the evidence in an authorized evidence storage area. Even more simply stated, this case comes down to whether a locked desk drawer or another lockable container in a personal office is recognized by the department as an authorized evidence storage area.

NE#1 was, at the time of the incident, a Detective assigned to the Department's Force Investigation Team (FIT). At his OPA interview, NE#1 stated that, at the time of this incident, he did not know that there was a locker used by the FIT unit to temporarily store evidence. As such, he believed that it was permissible to do so, again temporarily, in his locked desk drawer. From my review of his interview, it appeared clear that NE#1 knew the difference between temporarily securing items and then submitting them into evidence. It also appeared clear that NE#1 was aware that the FIT unit's expectation was that, after being temporarily secured, the evidence – including firearms – would be taken to the Evidence Unit and submitted into evidence. NE#1 stated that he did not tell his supervisors that he stored the firearms in his personal office, as such, he did not think that they would have been aware of that fact. There was no indication from either of the two interviews conducted of NE#1 that he was trained or instructed to keep evidence in his personal office, that he was ever told by a superior officer that he was permitted to do so, that it was the practice of the FIT unit to allow such evidence storage, or that any superior officer actually knew that Detectives were doing so. NE#1 appeared to recognize his mistake at his OPA interview. He stated that given how busy he was with this and other cases, he lost track of time and forgot to enter the firearms into evidence. He referred to this incident as "embarrassing." NE#1 agreed that storing evidence in a personal locker was not best practice, but asserted that he did not believe that it negatively impacted FIT's investigation.

During his OPA interview, Named Employee #2 (NE#2), who is the current FIT Sergeant, contended that SPD policy did not actually define what an "authorized evidence storage area" was. He further contended that it had been the past practice of FIT, with the knowledge of Captains and Lieutenants assigned to the unit, to store evidence in both the desks and lockers in the personal offices of FIT Detectives. NE#2 provided OPA with a list of 47 cases, going back to 2014, where this had occurred. In the vast majority of these cases, the evidence in question was solely hard drives or other technological evidence (34 of the 47 cases). However, in eight other cases, firearms were not submitted until a day or more after the incident (one day and two days, one day, two days, two days, two days, two days, 19 days, and 53 days). In only two of those cases, this matter (53 days) and another case currently being investigated by OPA (19 days), was the delay for submitting the firearms into evidence longer than two days. I note that in one other case the evidence in question was an air rifle, case and rounds, and this evidence was submitted 11 days after the incident. In four other cases the evidence in question was Taser-related and was submitted into evidence two days, three days, 16 days, and 42 days after the incident. Lastly, in one other case a tooth was not submitted into evidence until five days after the incident.



Named Employee #3 (NE#3) was, at the time this incident occurred, a Detective assigned to the FIT unit. However, at times, he also served in the role of an Acting Sergeant. NE#3 stated that a reasonable timeline for submitting evidence from a FIT investigation into the Evidence Unit or another authorized evidence storage area was either later during the night/day of the incident or during the Detective's next work shift. NE#3 told OPA that he did not think it was an accepted practice at FIT that Detectives would store evidence in their offices. He specifically stated: "I don't have any knowledge of that being an accepted practice. All I can speak to is what I would do." NE#3 indicated that storing evidence in his office was not how he was trained.

The former Captain of the FIT unit was also interviewed by FIT. He stated that Detectives were generally not permitted to store evidence in their offices and that this was particularly the case with firearms. The FIT Captain told OPA that a desk drawer was not an authorized evidence storage area. The FIT Captain denied knowledge of any evidence other than hard drives and similar technological evidence being stored in personal offices. With regard to these items, while the FIT Captain noted that it was not best practice to store them in personal offices, he indicated that this was largely "redundant" evidence and distinguishable from forensic evidence and firearms. With regard to this specific case, the FIT Captain recounted being surprised and disappointed when he learned that the firearm had been kept in NE#1's office for 53 days. He recalled confronting NE#1 about this matter and stated that NE#1 was contrite and accepted responsibility.

Lastly, OPA interviewed the current FIT Lieutenant. He stated that, as he was new to the unit, he did not have first-hand knowledge as to what had occurred in this incident. He did discuss this matter with both NE#2 and the FIT Captain, but he was unsure of whether he did so at the same meeting (as NE#2 recounted). He also discussed with both of them the new evidence handling standards that the office instituted after this case came to light.

I note that the list provided by NE#2 of other cases in which evidence was retained in personal offices is not necessarily inconsistent with NE#3's and the FIT Captain's accounts of the unit's practices. For example, in six of the eight cases in which firearms were not entered immediately into evidence, the firearms were taken to the Evidence Unit within no more than two days of the incident. This could be entirely consistent with the evidence being brought to the Evidence Unit by the next working shift of the Detective, which was a "reasonable timeline" as indicated by NE#3. In only two cases – this case and another currently being investigated by OPA – was this "reasonable timeline" significantly deviated from. Had NE#1 retained the firearm in his office for two days, I would have found that his behavior was consistent with the past practice of the office and, while I believe that practice to have been problematic for a number of reasons, I would not have recommended that this allegation be sustained.

However, here, the firearm was kept in NE#1's desk drawer in his personal office for 53 days – almost two months. That desk drawer could have had contaminants therein, had no tracking or bar code system to ensure chain of custody, and was not a permissible evidence storage location. Moreover, simply because the prohibition on storing evidence in one's personal office is not explicitly set forth in policy does not change this logical determination. It is simply implausible to me that any Detective, let alone a Detective with the level of expertise and specialized training as those assigned to FIT, would have believed it permissible to store a firearm that was used in a fatal officer-involved shooting in a desk drawer. While OPA's investigation indicated that no forensic harm had come from the storage of the firearms in NE#1's desk drawer, such harm easily could have occurred. If this had happened, it could have greatly undermined the legitimacy and public trust and confidence in the Department's investigation into a matter of significant public concern. Even if this did not ultimately result from NE#1's conduct, that he put the FIT investigation at such risk is unacceptable. Moreover, not only did this error have the potential to negatively impact



FIT's investigation, it also ran the risk of tainting later possible criminal, civil and administrative proceedings. That there was no ill-effect to the evidence in this case was extremely fortunate.

Lastly, I want to make clear that I do not believe, based on my review of all of the evidence, that NE#1's conduct was motivated by bad faith. FIT Detectives, NE#1 included, work incredibly hard in a stressful environment on some of the highest-profile cases in the Department. NE#1 recognized his error in this case to both his supervisor and OPA. I have no doubt that NE#1 will not engage in such conduct in the future. That being said, given the egregious nature of this incident, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

8.400-TSK-13 Use of Force - RESPONSIBILITIES OF THE FIT CASE DETECTIVE DURING A TYPE III INVESTIGATION (FIREARMS DISCHARGE)

SPD Policy 8.400-TSK-13 governs the responsibilities of the FIT case detective during an investigation into a Type III use of force. Specifically, SPD Policy 8.400-TSK-13(7) requires that the case detective "confirms [that] the involved officer's firearm is placed into Evidence."

Based on a preponderance of the evidence standard, I conclude that the expectation and practice of FIT was that the vast majority of evidence – and particularly firearms and forensic evidence – would be placed in the Evidence Unit as soon as possible. For practical reasons and based on the nature of the fast-paced and hectic work of a FIT Detective, there were times that firearms and forensic evidence were maintained in personal offices, but I find that this was the exception rather than the rule, and that this case and the other case being investigated by OPA were outliers.

As such, and for the reasons stated above, I find that NE#1 also violated this policy through his actions. However, as I have already recommended that the above allegation be sustained, I deem it unnecessary to also sustain this allegation. Instead, I make the following Management Action Recommendation.

- **Management Action Recommendation:** The Department should modify SPD Policy 7.010-POL-1 to define what an authorized evidence storage location is. The policy should make clear that desk drawers or lockers in personal offices are not such authorized locations. The FIT unit should also modify its manual to make clear the expectation that officers will, as soon as feasible, take case evidence to the Evidence Unit. It should clearly indicate what, if any, other authorized evidence storage locations exist in the FIT unit, as well as that evidence should never be stored in personal offices. Lastly, the FIT unit should amend its manual to provide more detail on its expectations for evidence handling and provide additional training for its Detectives and supervisors in this area.

Recommended Finding: **Not Sustained (Management Action)**



Named Employee #1 - Allegation #3

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (FIT MANUAL)

SPD Policy 5.001-POL-2 requires that SPD employees adhere to laws, City policy and Department Policy. While the policy instructs officers that they must act in compliance with the SPD Manual, published directives and special orders, and Department training, it does not specifically state that non-compliance with a unit manual, such as the FIT Manual, constitutes a violation of SPD Policy. As such, even though I believe that NE#1 failed to act in compliance with the FIT Manual in this instance, this policy does not cover that failure and, even if it did, the sustained finding above already captures the misconduct in question.

However, I believe that this policy should be modified to be clear that violations of unit manuals constitute a violation of SPD Policy 5.001-POL-2.

- **Management Action Recommendation:** SPD Policy 5.001-POL-2 should be modified to include unit manuals as one of the types of regulations that officers are responsible for adhering to. The policy should be amended to make clear that failure to comply with unit manuals – specifically, for units such as FIT, which are crucial to SPD’s ability to carry out law enforcement prerogatives, maintain community trust and provide internal accountability – constitutes a violation of both policy and the Department’s expectations.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #2 - Allegation #1

8.400-TSK-15 Use of Force - RESPONSIBILITIES OF THE FIT UNIT SERGEANT DURING A TYPE III INVESTIGATION (FIREARMS DISCHARGE)

SPD Policy 8.400-TSK-15 governs the responsibilities of the FIT sergeant during a Type III use of force investigation. It sets forth six tasks assigned to the FIT sergeant, including that the sergeant “[o]versees the FIT investigation, per the FIT Manual.” The FIT Manual, in turn, itemizes how the sergeant is to oversee the investigation. The FIT Manual does not indicate any specific responsibility of the sergeant to oversee the placement of items into evidence by the detectives.

The FIT Manual makes the Sergeant responsible for the Detectives’ investigation. While, as general matter, this makes sense, this is somewhat more complex when looked at in the context of FIT. At times, and at the time of the officer-involved shooting in this case, FIT Detectives had heavy caseloads, including multiple fatal and non-fatal shootings. There is and was only one Sergeant assigned to FIT – NE#2. He is tasked with reviewing each investigation, including all of the evidence, and basically mirroring the review conducted by the Detectives. This would be a substantial workload for two Sergeants, let alone one. Given this, it is unrealistic for NE#2 to be required or expected to micro-manage the Detectives. The individuals assigned to the FIT unit are well qualified and are presumed capable of taking on a substantial amount of responsibility and doing so relatively autonomously. While, in a perfect world, NE#2 would have been aware of each step NE#1 took in this investigation and would have known, in real time, of NE#1’s failure to place the firearms into evidence, I cannot find that this was required on his part.



Moreover, based on both NE#1 and NE#2's statements, there is no evidence that NE#2 knew that, in this case, NE#1 retained the firearms for 53 days until he reviewed NE#1's Force Investigation Report (FIR). While it may be the case that he was aware of detectives failing to timely submit evidence in the past, those cases are not before me.

I do not find that NE#2's failure to learn of this misconduct before his review of the FIR, in and of itself, a violation of policy. Moreover, the FIT Manual does not explicitly require the FIT Sergeant to monitor and oversee the handling of evidence by the Detectives. As such, even if I found that NE#2 should have done so in this case to be consistent with best practices, I cannot determine, based on my review of the applicable policies and the FIT Manual, that such failure constituted a violation of policy. As such, I recommend that this allegation Not Sustained – Inconclusive.

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

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (FIT MANUAL)

I refer to Allegation #1 and the Management Action Recommendation set forth above.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #2 - Allegation #3

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

SPD Policy 5.002-POL-6 requires that Department employees report alleged policy violations. Minor misconduct must be reported to a supervisor, while (under the current iteration of the policy) serious misconduct must be reported to both a supervisor and OPA.

Here, while NE#1 did not indicate that he informed NE#2 of the fact that he stored the firearms in his locked desk drawer, this allegation was classified against NE#2 as he read NE#1's FIR relating to this case and approved it prior to sending the FIR to the FIT Captain for final review. In doing so, he read the entry in the report that discussed the storage of the firearms and that the firearms were not submitted into the Evidence Unit. However, NE#2 did not report this potential misconduct to either a supervisor or OPA.

In response to this allegation, NE#2 proffered two explanations. First, he stated that he did not necessarily believe it to be a violation of policy for FIT Detectives to store evidence in their personal offices. Second, he contended that, even if such conduct did constitute a violation of policy, FIT's command staff knew of and acquiesced to this practice and, thus, he should not personally be held accountable for his failure to report.

As discussed more fully above, even if it did not violate policy to keep a firearm in a personal office for two days, it certainly did violate policy when that firearm was not placed into evidence for 53 days. Similar to NE#1, NE#2 should have known this to be the case based on his advanced training and significant experience in this area. Any argument to the contrary is without merit.



Moreover, even if NE#2's supervisors were aware of this conduct, that does not excuse NE#2's failure to report. If his supervisors were knowingly condoning ongoing policy violations, NE#2 should have then notified the Assistant Chief overseeing the Compliance Bureau, the Chief of Police, and initiated an OPA complaint. He should not have waited until his OPA interview when he was confronted with the possibility of a sustained finding and discipline to disclose this information.

Given the information provided to OPA by NE#2 during his interview, perhaps it was OPA's mistake to not name in this case each and every supervisor assigned to FIT since 2014. I note that, since early March 2017, FIT has been under new leadership and I sincerely hope that the recently assigned Captain makes it abundantly clear to all FIT employees, including NE#2, that the retention of evidence in personal offices is absolutely unacceptable and inexcusable given the negative impact it could have had on this and past investigations.

With regard to NE#2's failure to report in this matter, I believe that this was contrary to policy. However, given the disputes of fact between NE#2 and his supervisor, I cannot find that this misconduct was intentional and that it warrants a sustained finding. I distinguish NE#2 from NE#1 in this regard given that, while NE#2 stated that the storage of evidence was known by supervisors and was the practice of FIT, NE#1 never made those assertions to OPA and stated that the decision to keep the firearms in his office for 53 days was his and his alone. For these reasons, I recommend that NE#2 receive a training referral.

- **Training Referral:** NE#2 should receive additional training concerning the Department's expectation that evidence will be entered into the evidence unit or an authorized evidence storage location as soon as feasible. NE#2 should also be instructed that, contrary to his mistaken belief and the purported past practices of FIT, a personal office and even the lockable locker or drawers therein is not such an authorized location. NE#2's chain of command should explain to him how these evidence retention practices, many of which he knew about, could have negatively impacted FIT investigations and later criminal, civil, or administrative proceedings. I expect that the new Captain assigned to the FIT unit will make this message abundantly clear not only to NE#2 but to all of the others individuals assigned to this unit. This re-training and associated counseling should be memorialized in a PAS entry.

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

Named Employee #3 - Allegation #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 6. Employees Will Report Alleged Violations

Based on my review of the evidence, it does not appear that NE#3 was aware of any possible policy violations that had been committed by NE#1. Notably, at his OPA interview, NE#1 stated NE#3 did not know that NE#1 had not timely submitted the firearms into evidence. NE#3 told OPA the same during his interview.

As such, I recommend that this allegation be Not Sustained – Unfounded as against NE#3.

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