



CLOSED CASE SUMMARY

ISSUED DATE: MAY 22, 2018

CASE NUMBER: 2017OPA-1227

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 13. Retaliation is prohibited	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	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:

The Complainant, the Office of Police Accountability, alleged that Named Employee #1 may have violated SPD’s retaliation and professionalism policies by filing an OPA complaint against the OPA investigator assigned to a previous complaint filed against Named Employee #1.

ADMINISTRATIVE NOTE:

After meeting with the Named Employee’s chain of command during the discipline meeting in this matter, I made the decision to amend my findings in this case. Specifically, I decided to reverse the Sustained findings to Training Referrals. This is not because I no longer conclude that the Named Employee violated policy. To the contrary, I believe that he did do so. The larger issue is the remedy. Were this allegation to be sustained and the Named Employee to receive discipline, it is unclear what changes this would effectuate. The Named Employee would feel victimized by and would further blame OPA and would likely learn nothing from this incident. If this ends up being the case, then the Department’s disciplinary system has fallen short. I think the better result would be to increase understanding between the Named Employee specifically (and all officers generally) and OPA.

This case has further highlighted the need for all officers to have greater insight into OPA. There needs to be increased information sharing, whether through training, more frequent personnel assignments, or other mechanisms, between OPA and officers. In the conversations with the Department and NE#1’s chain of command that resulted from this case, we have committed to increasing communication and information sharing and will be working on a collective plan to ensure that cases such as this one do not occur in the future.

STATEMENT OF FACTS:

A. Prior Case Involving Named Employee #1

This case originally stemmed from a complaint referred to OPA by one of Named Employee #1’s (NE#1) supervisors. In that complaint, which was investigated under case number 2017OPA-0667, the supervisor wrote: “Officers may have violated SPD 6.220(4) by detaining the subjects in restraints after determining that they weren’t involved in



[the suspected criminal activity], and awaiting for a supervisor to arrive to screen the incident prior to releasing them." A five-day notice providing general information concerning the complaint was emailed to NE#1 by the assigned OPA investigator

OPA initiated an intake investigation into the complaint. This intake, which was conducted by the OPA investigator, included a review of video and other documentation concerning the incident. An Intake Follow-Up Report was completed by the OPA investigator and was forwarded to OPA's civilian Deputy Director after being reviewed by his chain of command. The civilian Deputy Director added additional allegations concerning other officers, including those against NE#1, and forwarded the case to the OPA Auditor. Notably, it was alleged by OPA that NE#1 had, through his actions, caused a Terry stop to be effectuated and that the stop was not supported by reasonable suspicion. It was further alleged that, in doing so, NE#1 abused the discretion afforded to him as a police officer. The Auditor reviewed and approved the proposed classifications and returned the case to OPA. A 30-day classification notice was then sent to NE#1.

OPA commenced its investigation, which included interviewing NE#1. At the conclusion of this investigation, the OPA investigator completed a Case Summary. As with the Intake Follow-Up Report, the Case Summary articulated facts and did not opine as to what recommendations OPA should reach for the various allegations. This was purposeful. As is clearly stated in the OPA Manual, it is the responsibility of the civilian OPA Director, not sworn staff, to reach and recommend such findings. OPA recommended that both allegations be sustained against NE#1 and his chain of command concurred. The Chief agreed and issued two sustained findings against NE#1. He received a written reprimand that was served on him by one of his supervisors.

B. Named Employee #1's Complaint Against the OPA Investigator and OPA's Investigation into Potential Retaliation and Unprofessionalism by Named Employee #1

On November 23, 2017, prior to OPA's issuance of its recommended findings but after NE#1 had been named in that case and interviewed, NE#1 filed a complaint against the assigned OPA investigator. In that complaint, NE#1 wrote that: "Given the facts and circumstances at the time [of the incident], any reasonable officer would conclude that reasonable suspicion existed and the persons could and indeed should be stopped to investigate their involvement with the shooting. Anything less would be an egregious dereliction of duty, counterproductive to the goal of 'shots fired' emphasis, and a gross disservice to the people of Seattle."

NE#1 further contended that the OPA investigator assigned to the prior investigation acted in "blatant disregard for" and in "direct violation of" United States Supreme Court precedent and "falsely accused me of effecting an illegal stop, subjecting me to possible punishment and potentially placing my career in jeopardy." NE#1 went on to write that: "The nature of the event and the subsequent complaint indicate to me that [the OPA investigator] is either incompetent or knowingly or purposefully filed a false complaint." He further contended, apparently referring to the OPA investigator, that: "an accuser also conducting the investigation of alleged misconduct is a clear conflict of interest and ensures that an unbiased investigation is impossible."

NE#1 concluded his emailed complaint by writing the following:

As a direct result of this fallacious complaint, myself and other officers were unnecessarily removed from our regular duties to participate in the requisite interviews which creates



temporary gaps in coverage and reduced public and officer safety. The practice of filing such complaints only serves to dramatically damage morale and discourage officers from doing their best work in stopping criminals and ultimately makes the city and its citizens less safe.

As discussed more fully below, the OPA investigator against who this complaint was made was not responsible for the decision to initiate the prior investigation against NE#1 or the decision concerning which allegations would be classified against him. That decision was made by the Director and Deputy Director of OPA as required by the OPA Manual and City ordinance. For this reason, NE#1's allegations failed to actually allege a violation of policy against the OPA investigator and, consistent with the OPA Manual, NE#1's complaint was closed as a Contact Log in December 2017.

OPA then initiated this case against NE#1. The allegations were that, by filing a baseless complaint against the OPA investigator during the pendency of an active investigation, NE#1 acted in a retaliatory manner towards him and engaged in unprofessional behavior. As part of this investigation, OPA interviewed the NE#1.

C. Named Employee #1's OPA Interview

When questioned by OPA concerning his complaint against the OPA investigator, NE#1 stated that he believed that the OPA investigator filed the complaint against him because the investigator was the person who emailed him the five-day notice. This notice is purposed to inform officers that they are the subject of complaints and to provide a basic overview of what the allegations are. From a plain reading of this notice, which is attached to OPA's case file, there was no indication that the OPA investigator had initiated the complaint. Indeed, the notice stated the opposite: "The Office of Police Accountability has *received* a complaint of a possible policy violation or misconduct." (Emphasis added.) The notice listed the OPA investigator as "OPA Intake Staff." The notice was also explicitly clear that no decision to investigate had been made at that point. It stated that "[a]n investigator looks into the complaint and completes a preliminary investigation" and, after that point, the Director – *not the investigator* – reviews the intake and determines whether the case will be investigated or handled by the named employee's supervisor. The notice further made clear that the OPA Director, not the investigator, makes a recommendation as to whether there were policy violations and the Chief of Police makes the final decision as to whether to uphold the OPA Director's recommendation and, if so, what discipline to impose.

NE#1 told OPA that he made the allegation against the OPA investigator because he believed that the complaint was "false and erroneous" and because he believed that the vehicle stop that he requested was supported by reasonable suspicion. NE#1 stated that he did not think that the OPA investigator had any "personal animus" towards him.

NE#1 was asked about his understanding of "how OPA works as far as from the time a complaint comes in through the conclusion of the process." NE#1 first stated: I really don't know." He expounded on this, however, and told OPA that he believed that:

once the complaint is filed it gets assigned to an investigator. That person investigates it with, with some direction, perhaps, from, from the Chain. Understanding that the, the person doing the investigation doesn't necessarily have a lot of say in how the, the investigation is concluded or, or the finding, rather.



NE#1 was then asked by OPA: “Okay. So were you aware that the complaint that you ended up being Named in was referred to OPA by a Patrol Sergeant and then only after receiving that complaint were you then added as a Named Employee to that complaint?” NE#1 responded that he was aware of that fact.

NE#1 further explained that he believed the OPA investigator’s actions amounted to a violation of the Department’s professionalism policy. He stated that he believed this to be the case because the OPA investigator’s “behavior reduced my trust in him.” He further expounded on this by stating:

Because, as I said, I, I disagree whole heartedly that there was no reasonable suspicion for that stop and I think I would have been remiss in not making the stop. And because of that, the, the allegation against me insinuates that I didn’t have any reasonable suspicion to make the stop. Which, which leads me to believe that this person doesn’t understand reasonable suspicion.

NE#1 denied that his filing of a complaint against the OPA investigator constituted retaliation. When he was asked what the difference was between the complaint he filed and a complaint of retaliation, he stated: “To me, the difference primarily is that I’m right.” He also indicated the following:

I, I had reasonable suspicion to make that stop and, and the, the complaint filed against me was, was erroneous and, and reduced my trust in, in him and OPA frankly, and it wasn’t to get back at him. I, I wasn’t trying to intimidate or coerce him into doing anything. I don’t, I don’t think anything’s going to happen as a result of it. I, I don’t think that I have the, the power or, or the, or the, the pull to create any sort of adverse action against him. I was just, my, my goal here was to make it known that I disagreed and, and, you know, hopefully prevent a similar situation in the future.

NE#1 stated that he did not believe that his filing of the complaint against the OPA investigator was an “adverse action.” When asked by OPA whether he believed that the filing of the complaint “was the most professional and proper way” to deal with his concerns, NE#1 said that he did not know and he “wasn’t sure how else to handle it.” When asked whether he sought advice from anyone prior to filing the complaint, NE#1 first said that he did not remember and then said that he did not know.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 13. Retaliation is prohibited

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-13.) SPD employees are specifically prohibited from retaliating against a person who, among other activities: “opposes any practice that is reasonably believed to be unlawful or in violation of Department policy”; “files a complaint or provides testimony or information related to a complaint of misconduct”; or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*) The policy further states that: “This prohibition will include any interference with the conduct of an administrative, civil, or criminal investigation.” (*Id.*)



From my review of NE#1's OPA interview, it appears clear that NE#1 knew that the OPA investigator did not initiate the allegations against him or decide any of the ultimate findings in this case. Moreover, even if NE#1 was personally ignorant of this fact, it was clearly and explicitly explained in the five-day notice that he received. NE#1's actual basis for his complaint appears to be that the fact that the investigator did his job and investigated allegations referred to OPA by NE#1's supervisor and classified for investigation by OPA's civilian Director and Deputy Director and his belief that these actions somehow violated the Department's professionalism policy. This argument is both meritless and misguided.

While NE#1 claimed that his filing was not an "adverse action" against the OPA investigator or purposed to influence the investigation into his conduct, I disagree. Moreover, not only could this conduct be viewed as "adverse action," but also as discouragement, intimidation, and coercion. This complaint was filed during a pending OPA investigation and, indeed, was submitted just two weeks after NE#1 was interviewed by the OPA investigator pursuant to that investigation. First, the filing of an OPA complaint against a blameless individual and for no legitimate law enforcement reason is a clear adverse action. Second, the fact that a complaint was filed against the investigator prior to his submission of his Case Summary to his chain of command and during his active investigation of a case is viewed by OPA as an attempt to discourage, intimate, coerce the investigator. Notably, in his complaint, NE#1 claimed not only that the investigator was either "incompetent" or had "purposefully filed a false complaint," but also that there was a "clear conflict of interest" and that maintaining the investigator on the case would make "an unbiased investigation...impossible." Functionally, this was an attempt by NE#1 to seek removal of the investigator from this case and to both negatively impact OPA's already limited resources and undermine its investigation. If such behavior was permitted or condoned by the Department, it would significantly impact OPA's functioning and the efficacy and legitimacy of the SPD's accountability and disciplinary systems.

In explaining why his complaint did not constitute retaliation, NE#1 stated that it was because he was "right" and because there was reasonable suspicion for the vehicle stop that he requested. Specifically, he stated: "And I disagree [with the allegation against him] 100 percent. I don't think there's any, any officer in America that would think that I didn't have reasonable suspicion to make that stop." This is concerning given that NE#1's own chain of command and the Chief of Police did not agree that NE#1 had a basis for the stop. Notably, they found that there was not sufficient reasonable suspicion and that NE#1 abused his discretion. Had they not believed this, NE#1's chain of command could have disagreed with OPA's recommended findings and written their own memorandum to provide to the Chief of Police and the Chief could have written a letter disagreeing with OPA's recommended findings to the Mayor, City Council, and other accountability system entities. They did not do so. OPA's expectation was that NE#1's chain of command would have spoken with him at the time they served him with the discipline in this case to explain this consensus findings. However, based on NE#1's subsequent complaint and statements during his OPA interview, even if this conversation occurred, it is evident that it had no impact on NE#1.

By filing a meritless complaint against the OPA investigator, who he knew or should have known was not responsible for the allegations classified against him and the investigation into his conduct, he undercut the Department's disciplinary system and he intentionally misused the OPA process. Had NE#1 had a problem with the investigation, he could have filed a grievance concerning the sustained findings against him and the discipline imposed. He chose not to do so and, instead, used an OPA complaint in an attempt to seek retribution for perceived wrongs against him. Indeed, it strains credulity that NE#1 could have truly believed that an OPA investigator would deliberately initiate and engineer a false complaint against him for some undefined reason. This behavior undermined the entire system, as well as reduced public trust in both NE#1 and the Department.



NE#1 should also consider the effect his actions had on the OPA investigator. The sergeants assigned to OPA are placed in the difficult position of investigating their peers. As a function of this role, they are, at times, mistrusted and treated poorly. It is a difficult job and, often, not one that the sergeants decided to do voluntarily. That being said, they take their jobs seriously and with a dedication to the goal of making our Department better, more constitutional, and increasingly just and fair to all. They strive to be neutral and objective discoverers and communicators of fact. They do not decide which cases should be investigated, opine on the allegations to be classified, or reach opinions in their Case Summaries. These are my responsibilities as the OPA Director. Were NE#1 upset at the conduct of OPA, he should have complained or sought a remedy against me. In my opinion, by instead filing a complaint against the blameless OPA investigator, NE#1 acted contrary to both the Department's and Community's expectations of his conduct.

That being said, and while I believe that NE#1's actions violated policy, I believe that the more appropriate remedy here is a Training Referral. My rationale for this decision and my basis for reversing my previous recommendations of Sustained findings is outlined in the Administrative Note section above. In summary, the goal of SPD's disciplinary system is to change behavior. Whether willful or not, NE#1 fundamentally misunderstands the work of OPA and, specifically, the role and responsibilities of OPA's sergeants. Increasing that understanding, rather than punishment, is the result that, in my opinion, has the greatest chance to effectuate behavioral and systemic change. To that end, and as explained more fully below, I recommend that NE#1 be required to attend training at and with OPA as part of this Training Referral.

- **Training Referral:** NE#1's chain of command should discuss this matter with him. It should convey to NE#1 the same concerns regarding his conduct that it articulated to OPA during the discipline meeting in this case. It should further reiterate that the Sustained findings that were issued against NE#1 in 2017OPA-0667 were agreed upon and the consensus of his chain of command, SPD command staff, and the Chief of Police. His chain of command should instruct him that his actions in this case were inappropriate, outside of the expectations of the Department, and should not be repeated. In addition, NE#1 should receive training concerning OPA's work and processes. He should further receive specific training concerning the role and responsibilities of the sergeants employed by OPA. To do so, he should be assigned to OPA for a period of time, not less than eight (8) hours, for that training.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-9 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-9.)

For the same reasons as stated above, I find that NE#1's conduct also violated the Department's professionalism policy. However, I refer to the Training Referral itemized in Allegation #1.

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