



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 16, 2018

CASE NUMBER: 2018OPA-0449

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 18. Employees Must Avoid Conflicts of Interest	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain	Not Sustained (Training Referral)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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:

It was alleged that the Named Employee engaged in a conflict of interest, used his position for personal gain, and acted unprofessionally when he sent an email from his work account requesting an investigation into potential harassment and retaliation against his son.

STATEMENT OF FACTS:

The Complainant is a supervisor in the City’s Finance and Administration Section (FAS). One of the employees that he supervised was Named Employee #1’s (NE#1) son. The son filed a retaliation claim against the Complainant and a harassment claim against another FAS employee. The Complainant recounted that, after this complaint was filed, NE#1 sent an email to the lead investigator at the Seattle Department of Human Resources (SDHR). NE#1 “cc’d” both the Complainant and the other FAS employee on this email, as well as a FAS HR representative.

In the email, NE#1 noted that he was employed as a supervisor at SPD and that, as a supervisor, he had learned information that troubled him and that he wanted SDHR to be aware of. NE#1 wrote that, as a result of contacting SDHR, he hoped that “no further inappropriate or harassing behavior comes to the employee involved.” NE#1 noted his belief that the allegations concerned conduct that possibly constituted EEO violations. He requested that SDHR look into this matter and indicated that he was happy to share information with SDHR. NE#1 did not disclose that the employee who had allegedly been subjected to these potential EEO violations was his son.

The Complainant asserted his belief that NE#1 sent this email using his title and position at SPD “as a sense of authority or abuse of position by announcing that he is with SPD and a West Precinct Sergeant.” The Complainant further alleged that, by sending this email and getting involved with the case his son had already filed, it represented a conflict of interest. Lastly, the Complainant alleged that NE#1’s sending of the email was “inappropriate” and unprofessional.



At his OPA interview, NE#1 stated that he sent the email after learning of some potential EEO violations towards his son. He said he sent the email to the SDHR investigator because he was unaware of who investigated these matters. NE#1 stated that he included the Complainant and the two other FAS employees in the “cc” line because they were either FAS HR personnel or were his son’s supervisors. NE#1 stated that he did not completely understand the structure of his son’s unit. NE#1 denied that he intended to send a “veiled threat” by including the Complainant and the other employee on the email. NE#1 told OPA that he was aware that his son’s complaints were already being handled by HR, but that he did not know the extent or result of that investigation.

NE#1 indicated that he wrote the email in question during his shift and from his Department email account. He stated that he did not seek approval from a supervisor prior to doing so because the email was not related to Department business. NE#1 did not believe that he engaged in a conflict of interest; however, he recognized the issues that later flowed from his sending of the email. NE#1 denied that he used his position for personal gain and asserted that he had nothing to actually gain from doing so. NE#1 further denied engaging in unprofessional conduct. He explained his belief that, as a City employee, it was important for him to report possible inappropriate behavior. He indicated that he did not perceive that his actions would have resulted in him later being the subject of an OPA complaint and investigation. Lastly, NE#1 told OPA that, if he was faced with this situation again, he would send the email from his personal email account and just include his name and not his employment status.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 18. Employees Must Avoid Conflicts of Interest

SPD Policy 5.001-POL-18 requires that Department employees avoid conflicts of interest. In this regard, the policy specifically provides the following: “Employees will not engage in enforcement, investigative, or administrative functions that create or give the appearance of conflicts of interest”; and “Employees will not investigate events where they are involved. This also applies where any person with whom the employee has a personal relationship is involved in the event.” (SPD Policy 5.001-POL-18.)

Under the plain language of the policy, I do not believe that NE#1’s actions constituted a violation of its terms. NE#1 did not engage in any enforcement, investigative, or administrative function when he sent the email in question. His conduct, while not optimal, is more appropriately discussed in the context of Allegation #2 and Allegation #3, below. For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain

SPD employees are prohibited from using their position or authority for personal gain. (SPD Policy 5.001-POL-13.)

The Complainant alleged that, when NE#1 sent the email concerning this matter from his work email account, he was using his position and authority as a Department supervisor for personal gain. Specifically, the Complainant



contended that NE#1 used his position and authority to impact the investigation into his son's allegations of harassment and retaliation.

NE#1 denied doing so and, in response to this allegation, stated that he had nothing to gain from sending the email. I disagree with this assertion. I believe that, by allegedly impacting the investigation in his son's favor, NE#1 would have incurred a benefit. Based on NE#1's OPA interview, I do not believe that he was intentionally trying to do so. Further, there is no evidence suggesting that the email did, in fact, have any impact on the investigation conducted by SDHR. However, the email had the appearance of impropriety and could have had such an effect.

Given the above, I find that it was improper to send the email from NE#1's work account. However, under the circumstances of this case and when applying a preponderance of the evidence standard, I do not feel that this behavior warrants a Sustained finding. Fundamental to this decision is my agreement with NE#1 that it is important that alleged misconduct, such as that which he believed his son was a victim of, should be reported. That being said, NE#1 should have done so from his personal email account. For these reasons, instead of a Sustained finding, I recommend that NE#1 receive a Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning SPD Policies 5.001-POL-13 and 5.001-POL-10. He should be informed that his email, even if well intentioned, had the appearance of impropriety and should have been sent from his personal email account and while he was off-duty. NE#1 should be counseled to avoid engaging in similar conduct in the future. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

Named Employee #1 - Allegation #3

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

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.) 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.*)

As discussed above, I find that NE#1's sending of the email was inadvisable and had the appearance of impropriety. In this respect, I conclude that it could have served to undermine public trust in the Department. However, for the same reasons as articulated in the context of Allegation #2, I do not believe that NE#1 intended to engage in unprofessional behavior and I recommend that he receive a Training Referral rather than a Sustained finding. I further refer to the above Training Referral.

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