



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 23, 2018

CASE NUMBER: 2018OPA-0505

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain	Not Sustained (Unfounded)
# 3	12.050 - Criminal Justice Information Systems 7. Employees Shall Not Discuss or Provide Information to Any Person Who Is Not a Member of the Criminal Justice System	Not Sustained (Unfounded)
# 4	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:

The Complainant makes three general allegations against Named Employee #1. First, that she used her position and access to law enforcement documents and databases to access a criminal report filed by the Complainant and then provided information concerning that report to their mother. Second, that she was involved in the mother’s theft of money from the Complainant’s home. Lastly, it was alleged that Named Employee #1’s overall conduct in this matter was unprofessional. These allegations are discussed in turn below.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

The Complainant reported to the police that his mother had stolen approximately \$60,000 from his home. He told the police that the money had been left to him by his deceased father and that he had secured it in “a cashbox in the ceiling.” The Complainant stated that his sister, Named Employee #1 (NE#1), was with his mother inside the house when the money was stolen. He further stated that he spoke to his mother about the theft and she admitted to it. Lastly, the Complainant contended that NE#1 used her Department access to determine that a criminal report had been taken and informed her mother of this.

SPD criminally investigated this matter. That investigation included determining whether or not NE#1 had accessed any records concerning the incident. The criminal investigator determined that there was no evidence that she did so. After being read *Miranda* warnings, NE#1 agreed to give a statement to the criminal investigator. NE#1



confirmed that the money had been taken by her mother, but stated that her mother believed that the money belonged to her at the time. NE#1 recounted that she was in the house with her mother at the time and that she was helping to locate other documents that were related to her deceased father's estate. Lastly, NE#1 told the criminal investigator that her mother could enter the house at any time she wanted because her mother owned it.

Criminal charges were recommended against both NE#1 and her mother. These charges were ultimately declined by the King County Prosecuting Attorney's Office. The prosecutor, who noted that NE#1's "role appears to have been her presence in the house while their mother searched and doing nothing to stop or report it," declined to prosecute to allow the parties to work out their concerns regarding whether the money at issue should have been included in the father's estate in the civil courts.

After the decline of the charges, OPA commenced its investigation. OPA interviewed NE#1. She stated that she had not been arrested or charged with any crime. She further told OPA that she did not withhold any information from law enforcement. NE#1 stated that she did not take any money from the house. When asked why she did not report or prevent her mother taking the money, she said that she did not know who the money belonged to. She thought that the money belonged to either her mother or her father, given that her mother owned the house and because, if the money was part of her father's estate, her mother was legally entitled to it. NE#1 told OPA that she was unaware of the true ownership of the home and was unfamiliar with landlord/tenant law. NE#1 stated that she did not intend to deprive her brother of money or to commit any crime. She stated that the estate is still being litigated and this issue has yet to be resolved.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.

Based on my review of NE#1's OPA interview, she appeared to be forthcoming. She contended that she did not intend to violate the law and stated that she did not do so. While she noted that she was not arrested or formally charged, charges were, in fact, referred by the criminal investigator. It remains that she was present in the Complainant's house without permission to be there and, while inside, her mother took money that she had no apparent legal right to. By being present with her mother and by not reporting the taking of the money, NE#1 arguably aided and abetted in theft.

NE#1 was not criminally charged and I am unwilling to substitute my judgment for that of the prosecutor. Ultimately, I find that the record is insufficient to allow me to determine whether NE#1 engaged in criminal behavior during this incident. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

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.)

NE#1 stated that she did not access any of the files concerning the report filed by the Complainant. She acknowledged that she told her mother how to make a public records request, but she contended that this was



publicly available information. NE#1 further stated that she did not obtain any of the money at issue and that it was still being contested by the parties.

There is insufficient evidence to determine that NE#1 used her position for personal gain during this incident. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #3

12.050 - Criminal Justice Information Systems 7. Employees Shall Not Discuss or Provide Information to Any Person Who Is Not a Member of the Criminal Justice System

SPD Policy 12.050-POL-7 states that employees shall not discuss or provide information to any person who is not a member of the criminal justice system.

The Complainant alleged that NE#1 accessed restricted criminal justice systems and then provided information contained therein to her mother. NE#1 stated that her mother was aware that a report was going to be filed because the Complainant told her that he was going to do so and that she provided no protected information to her mother.

As discussed above, the criminal investigator determined that there was no evidence that NE#1 did so. OPA's investigation yielded a similar conclusion. Even if NE#1 informed her mother of how to file a public records request to obtain the report, that was publicly available information.

Ultimately, the evidence in the record indicates that NE#1 did not violate this policy. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #4

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.)

In this case, NE#1 engaged in activities, or failed to prevent or report activities, that resulted in a criminal investigator concluding that she violated the law. Even if it was not and cannot be proved that she did so, this reflected poorly on her, as a SPD employee, and on the Department as a whole. I believe that NE#1 is regretful of this situation and, given what she has already experienced and is continuing to experience with her family, I do not believe it necessary or warranted to impose a Sustained finding here. Instead, I issue the following Training Referral and counsel NE#1 to be more cognizant of the Department's expectations of her conduct in the future.



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- **Training Referral:** NE#1's supervisors should discuss this matter with her and inform her that, even though OPA did not recommend that the findings in this investigation be sustained, her behavior reflected poorly on the Department and was largely inconsistent with the Department's expectations. Her supervisor should provide her with any further counseling and, if applicable, retraining, that is deemed necessary. This counseling and any associated retraining should be documented and this documentation should be maintained in an appropriate database.

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