



CLOSED CASE SUMMARY

ISSUED DATE: MAY 22, 2019

CASE NUMBER: 2018OPA-1148

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 6. Employees May Use Discretion	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 14. Retaliation is prohibited	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:

It was alleged that the Named Employee retaliated against the Subject when she completed a report detailing that he committed a traffic violation. It was further alleged that the Named Employee may have abused her discretion when she completed the report but failed to take any law enforcement action to address the traffic violation.

ADMINISTRATIVE NOTE:

This case was provided to the Office of Inspector General for Public Safety (OIG) for review and certification on March 26, 2019. On April 3, 2019, the OIG requested that OPA contact and attempt to interview the Subject. OPA completed this additional investigation and re-sent the case to the OIG on April 29, 2019. In that transmission, OPA indicated that the investigation was complete and again asked for a certification.

SMC 3.29.260(G) states the following: “If the OIG has not advised OPA of concerns with the investigation within ten days after being notified that an investigation has been preliminarily completed the OPA Director may certify the case and issue findings. In these instances, OIG is precluded from requiring further investigation.” As discussed above, OPA completed the investigatory steps identified by the OIG and indicated that its investigation was complete on April 29. However, as of the date of this DCM and more than ten (10) days after the date of provision of the case to the OIG, the OIG has not responded to certify the case or to direct that additional investigation be completed. Accordingly, consistent with the SMC, I certify this investigation as thorough, objective, and timely and proceed to issue the recommended findings set forth herein.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 6. Employees May Use Discretion

The Complainant sent an email to the Chief of Police concerning her son, who is referred to herein as the Subject. The Complainant stated that a police report was filed against the Subject by Named Employee #1 (NE#1) and that this was done without the Subject’s knowledge.



OPA interviewed the Complainant. She stated that the Subject had been stopped for a traffic infraction during a separate incident and was informed by the officer that his driving record did not “look good.” She said that she followed up with the Chief and learned that NE#1 wrote a report concerning the Subject that the Subject did not know about or receive. The Complainant told OPA that the Subject relayed to her that he saw a patrol vehicle behind him and that it followed him for more than a mile. The Subject told her that he recognized that it was NE#1 and he slowed down to ask her whether there was anything she needed to say to him. NE#1 then drove away without saying anything. The Complainant alleged that the Subject felt “targeted and harassed.” She further stated that she believed it to be “borderline harassment and overreach” for her son to be the subject of a report that he did not know about. Lastly, the Complainant expressed her concern that this incident could negatively affect the Subject’s integrity and credibility, as well as negatively affect him in future criminal proceedings.

OPA also interviewed the Subject. The Subject stated that a patrol vehicle was following him on the date in question, but that he did not know that it was NE#1 at the time. He stated that he did not think the patrol vehicle was tailgating him. He recalled that he slowed down and put up his hands as if to say: “what do you want me to do?” The Subject told OPA that he did not know whether NE#1 knew that he was the individual that she was following. The Subject said that, during that time, he did not exceed 40 mph.

OPA reviewed the report generated by NE#1. She wrote that she observed a grey Audi drive by her at a high rate of speed. She estimated that the vehicle was traveling approximately 60 mph at the time. NE#1 said that she began following the car and that it did not immediately slow down. She noted that she drove at around 50 mph behind the car without it slowing down as would normally happen in such situations. She documented that the car only slowed down when it arrived at a red light. While at the light, NE#1 ran the plate of the vehicle and it came back to the Subject. She recalled that the Subject had previously filed two OPA complaints against her and was very hostile during their previous interaction. She wrote that, when the light turned green, the car again sped up. NE#1 noted that the car hit approximately 40 to 45 mph at that time. She stated that the Subject looked at her and she believed that he recognized her at that time. She stated that he changed lanes to cut her off and, when she moved away from him, he continued to speed away. NE#1 believed that the Subject was trying to bait her to stop him and that, if she did so, he would retaliate against her by filing another OPA complaint. She stated that she contacted her Sergeant and then wrote her report.

There was no In-Car Video or Body Worn Video of this incident. This was not inconsistent with policy as NE#1 did not take any direct law enforcement action during this incident. OPA analyzed the GPS records from NE#1’s patrol vehicle. These records reflected a route and speed of travel for NE#1’s patrol vehicle that were consistent with that she reported.

OPA reviewed the prior OPA complaints involving the Subject and NE#1, as well as looked at a prior incident where he was arrested. In the first OPA complaint – 2017OPA-0843, the Subject claimed that NE#1 improperly issued him a citation and failed to provide her badge and name when requested by the Subject. This matter was sent back to NE#1’s chain of command to be addressed. The chain of command reviewed the ICV of the incident and identified that NE#1 did, in fact, provide her name and badge number when asked. The chain of command further determined that NE#1 acted appropriately when she issued the Subject a citation. In the second case – 2018OPA-0256, the Subject alleged that NE#1 engaged in biased policing when she stopped his motorcycle. OPA conducted a full investigation of that case and deemed the Subject’s allegation to be unfounded. SPD records further reflected that



the Subject was stopped for driving his motorcycle after he traveled for approximately 50 yards on one wheel. Based on a prior incidence of reckless driving on the Subject's record (case number 2018-363794), the Subject was placed under arrest. Notably, the prior reckless driving report that was relied upon by the arresting officer was unrelated to NE#1's General Offense Report that is at issue in this case or any other report that she generated based on her contacts with the Subject.

Lastly, OPA interviewed NE#1. She provided a similar account as that contained in the General Offense Report. She affirmed to OPA that she did not stop the Subject because she was concerned by his previous hostile behavior towards her, the fact that they were short-staffed on that day, and because of the two prior OPA complaints he filed against her. NE#1 defended her decision to not write a report. She told OPA that she felt that she exercised appropriate discretion when she did not stop the Subject and issue him a citation. She stated that she generated the report to protect herself if he filed another OPA complaint against her.

As indicated in SPD Policy 5.001-POL-5, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-5.)

Based on my review of the record, including NE#1's OPA interview, I find that she acted inconsistent with the Department's expectations when she failed to take law enforcement action during this incident. If NE#1 observed the Subject commit multiple traffic offenses, she should have stopped him. She should not have allowed him to engage in such behavior simply because she was afraid of additional OPA complaints. Moreover, contrary to her stated rationale for creating the report – protecting herself to the extent the Subject filed another OPA complaint, it caused the opposite result. Instead, it created the plausible argument that NE#1 retaliated against the Subject. This is particularly the case given the lack as Department video corroborating what she observed.

In the above respects, I find that NE#1 abused the law enforcement discretion afforded to her as an employee of SPD. That being said, given the unique facts of this case and given that I do not believe NE#1 necessarily intended to violate this policy, I recommend that NE#1 receive a Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1 should be counseled concerning this incident by her chain of command. Specifically, her chain of command should discuss her decision to not effectuate a traffic stop of the Subject and the consequences that resulted from that choice. 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)**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 14. Retaliation is prohibited

The Complainant and the Subject both contended that NE#1's writing of the report constituted retaliation against the Subject. Specifically, they believed that this act was in response to the prior OPA complaints that the Subject filed against NE#1.



SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” 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.*)

Had NE#1 written a report alleging criminal conduct on the part of the Subject solely to get retribution for his filing of OPA complaints against her, this would constitute retaliation in violation of SPD policy. However, there is insufficient evidence to establish that this was the case here. As a starting point, NE#1’s GPS records for her patrol vehicle supported her account. Moreover, the Subject acknowledged that he was traveling up to 40 mph at times. As such, even if NE#1 did not travel at speeds as high as what NE#1 reported or cut her off as she documented, he still drove in excess of City speed limits and violated the law in this regard. Lastly, and while not dispositive, OPA notes that the Subject has been stopped multiple times for similar traffic violations.

When applying a preponderance of the evidence standard, I find that the evidence proffered by the Subject and Complainant does not support a finding that NE#1 violated this policy. Again, and as discussed above, had NE#1 effectuated the traffic stop this allegation would likely not have been classified for investigation. Regardless, I recommend that this allegation be Not Sustained – Unfounded.

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