



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 24, 2019

CASE NUMBER: 2019OPA-0100

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations - 8. Employees Will Report Certain Events	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations - 8. Employees Will Report Certain Events	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 alleged that the Named Employees failed to report criminal activity committed by a family member, potentially acting contrary to law and SPD policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations - 8. Employees Will Report Certain Events

The Complainant, a detective, was formerly in a relationship with Named Employee #1 (NE#1) and they share one child together. NE#1 is now in a relationship with Named Employee #2 (NE#2) and lives with her and her two children. The Complainant asserted that she learned that one of NE#2’s children had sexually assaulted her child. She stated that this happened again in December 2018, but that she did not learn of the second sexual assault until January 31, 2019. The Complainant contended that both of the Named Employees were mandatory reporters and that they did not report the sexual assaults committed by NE#2’s child. The Complainant alleged that the Named Employees’ failure to report the sexual assaults violated law and policy. The Complainant lastly asserted that, had the Named Employees reported the first sexual assault, the second sexual assault would have been avoided.

Based on the nature of the Complainant’s allegations, OPA referred this matter back to SPD for criminal investigation. SPD interviewed the Complainant and she provided CPS and court documents. There were two CPS investigations into this incident. The first was deemed unfounded and the second was pending at the time of the Complainant’s interview. The Complainant reiterated her allegation that the Named Employees were mandatory reporters and that their failures to report were improper.



The assigned criminal detective contacted both of the Named Employees to see whether they would participate in interviews. Both declined to be interviewed but provided documents, including court records and screenshots of text messages between the Complainant and NE#2.

The criminal detective conferred with detectives from the Everett Police Department and the Snohomish County Sheriff's Office. Both detectives indicated that they were unaware of any exemptions for officers from being mandatory reporters; however, both further stated that their departments would not be pursuing criminal charges. The criminal detective also conferred with the King County Prosecuting Attorney's Office (KCPAO). The KCPAO indicated that they would not pursue the case as it did not occur in King County. The KCPAO further provided caselaw to the criminal detective – *State v. James-Buhl*, 190 Wn. 2d 470 (2018) – that was potentially relevant to this matter. *James-Buhl* stands for the proposition that an individual is not a mandatory reporter for acts allegedly perpetrated by a family member simply due to the nature of their employment. The case specifically referred to a teacher in whose home a family member committed a sexual assault. In reaching its conclusion, the Court reasoned as follows:

We hold that failure to comply with the mandatory reporting duty in RCW 26.44.030(1)(a) requires some connection between the individual's professional identity and the criminal offense. We reverse the Court of Appeals and reinstate the trial court's dismissal of the charges against James-Buhl because the alleged child abuse occurred in her home, and was perpetrated by another family member, with no connection to her professional identity as a teacher.

Based on the above, the criminal detective deemed the allegations against the Named Employees to be unfounded and his chain of command agreed. This matter was returned back to OPA for completion of the administrative investigation.

OPA first interviewed NE#1. He told OPA that he did not believe that he was a mandatory reporter. However, he stated that, when he became aware that CPS would be conducting an investigation, he did report that to his supervisor. Given this information, OPA chose to interview the supervisor to verify NE#1's account. The supervisor confirmed that NE#1 reported CPS's involvement to him. The supervisor stated that NE#2 also self-reported CPS's investigation, as well as that she was served with an order of protection by the Complainant. The supervisor, in turn, reported this information up the chain of command. Given the supervisor's testimony, OPA determined that it was unnecessary to also interview NE#2 and concluded its investigation.

SPD Policy 5.002-POL-8 requires that Department employees report the following factual circumstances to a supervisor and prior to their next shift: (1) where they are the subject or believe they may be the subject of a criminal investigation; (2) where "they are the respondent of an order of protection, restraining order, no contact order, anti-harassment order"; and (3) when "their Washington driver license is expired, suspended, revoked, or restricted, for example, with an ignition interlock driver license."

As discussed above, both Named Employees self-reported to a supervisor. However, neither reported the allegations of sexual assaults by NE#2's child at the time those incidents occurred. The question here is whether the Named Employees were required to immediately report by function of policy or law and, if so, whether their respective



failures to do so violated policy. First, based on the plain language of SPD Policy 5.002-POL-8, it does not appear that this policy applies to the circumstances of this case. Most notably, the Named Employees were not the subjects of any criminal investigation and they had no reason to believe at the time that they would be. Second, I concur with the findings of the criminal investigation regarding the applicability of *James-Buhl* to this matter. Given the holding in that case, there was no legal requirement for the Named Employees to report.

While I am certainly sympathetic to the Complainant's asserted belief that the failure to report caused additional traumatic acts to be incurred by her child, OPA's findings must be governed by applicable law and policy. When applying these standards and given the above analysis, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

Named Employee #2 - Allegations #1

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 8. Employees Will Report Certain Events

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded.

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