



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 25, 2020

CASE NUMBER: 2019OPA-0437

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained
# 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 14. Retaliation is prohibited	Not Sustained (Inconclusive)

Imposed Discipline

Oral Reprimand

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 stated that, after a car accident, the Named Employee threatened her son with a citation when he provided an account of the accident that the Named Employee did not agree with. The Complainant contended that, when the Named Employee did so, he used his position for personal gain, he retaliated against the son, and he was unprofessional.

ADMINISTRATIVE NOTE:

OPA originally concluded that the Named Employee violated the Department’s policy concerning using his position for personal gain. At his Loudermill hearing, the Named Employee presented his perception of what occurred and provided a convincing explanation for why he did not act contrary to this policy. Moreover, the Named Employee also accepted responsibility for the content of his text messages, even though he asserted that he did not have ill intent. For these reasons, OPA believed it appropriate to reverse the Sustained finding for Allegation #2 and now recommends that the Named Employee receive a Training Referral.

SUMMARY OF INVESTIGATION:

The Complainant’s son and Named Employee #1 (NE#1) were involved in a traffic accident. The accident occurred while NE#1 was off duty. The son and NE#1 exchanged personal and insurance information and both left the scene. NE#1 did not identify himself as a police officer at that time.

The Complainant later initiated this matter with OPA. She alleged that NE#1 threatened and harassed the son in order to get the son to change his account of the accident. She further alleged that NE#1 did so to obtain a financial benefit from the son. Lastly, the Complainant contended that, when his threats and harassment were unsuccessful, NE#1 stated that he was a police officer and told the son that he would receive a citation. As a result of this complaint, OPA initiated its investigation.



Interview of the Complainant's Husband

OPA attempted to interview the Complainant, but she was unavailable due to a recent medical procedure. OPA was able to interview her husband, who assisted the Complainant in writing the letter that initiated this complaint. The husband said that the son was driving a friend to the airport. The son, who is from Canada, was confused as to where he was going and was driving slowly. At that time, the son was being tailgated by NE#1. The son attempted to change lanes and put on his turn signal. When he did so, the son struck NE#1's vehicle. NE#1 did not identify himself as a police officer at the scene. The husband said that there was only minor damage to their car. The husband stated that, at a later point, NE#1 began phoning and texting the son concerning the accident. The husband relayed that NE#1 asserted that there was \$4,000 worth of damage to his vehicle. The son told NE#1 that he had filed a report with his insurance agency. NE#1 then identified himself as an SPD officer and threatened to send the son a citation. The husband did not ever speak with NE#1.

Interview of the Son

OPA also spoke with the son. The son said that he struck NE#1's vehicle when he made a lane change from the left to the middle lane. He said that, prior to the accident occurring, he "shoulder checked," but that NE#1 was in the son's blind spot. The son said that, when he got out of the car, he apologized to NE#1 because that is what the son thought one was supposed to do after an accident. He said that NE#1 asked him what he wanted to do. The son had never been in an accident before, so he said that he believed they were supposed to exchange information. The son said that there was minor damage to both vehicles and that there was no head light damage, as he said NE#1 later claimed. The son also did not believe that there was damage to both sides of the front of NE#1's vehicle, which NE#1 also later claimed. The son lastly indicated that, at one point, NE#1 claimed that the damage to his vehicle was \$4,000

When the son returned to Canada, he contacted his insurance agency. He provided a statement, which included his recollection of the accident. The insurance agent said he would communicate with NE#1's insurance agency moving forward. The son paid for the repairs to his car out of pocket. A few days later, the son received calls from NE#1 and the insurance agent. NE#1 asked about the progress of the claim and the son told NE#1 to go through his insurance agency. NE#1's insurance agent then obtained the son's statement.

NE#1 texted the son and said that he understood that the son was "not taking responsibility." The son told NE#1 that his statement was his point of view of the accident. NE#1 said that this was not what happened and, only then, identified himself as a police officer. NE#1 further told the son that he would be issued a citation in the mail. The son felt that this was strange and was surprised that NE#1 did not previously identify himself as an officer. The son felt that NE#1's texts were purposed to threaten the son to change his statement. No citation was ever sent.

Interview of NE#1

NE#1 told OPA that the son turned into his lane and struck his vehicle. NE#1 said that, after the accident, the son got out of his car, apologized, and said that he did not see NE#1. The son said that he was on the way to the airport and a friend. NE#1 told OPA that he decided not to call for an officer to come to the scene because he thought the son would miss a flight. Instead, NE#1 decided to exchange information. NE#1 said that the son seemed cordial. Given this, NE#1: "tried to do him a favor by not calling for a unit." NE#1 explained that, had an officer come to the scene,



the son “would get a ticket and most likely he wouldn’t make it to drop his friend off at the airport.” NE#1 confirmed that he did not identify himself as a police officer at that time.

NE#1 said that he and the son were supposed to talk on the following Tuesday. When NE#1 did not hear from the son, he called the son. The son later texted him back. They were able to speak, and the son gave NE#1 the claim number. NE#1 provided a statement to the insurance agency and also learned about the statement made by the son. NE#1 determined that the son said that both he and NE#1 were changing lanes at the time of the accident, which NE#1 asserted was inaccurate. As his previous interaction with the son had been pleasant, he again contacted the son to figure out what was going on with the statement. NE#1 disagreed with the son’s account of the accident and, at that point, NE#1 identified himself as a police officer. He told the son that he was trying to do the son “a favor by not having an accident report taken.” NE#1 explained that he stated the following to the son: “I’m going to contact our accident investigations squad, have them take an accident report, and then I said, expect a citation because usually what we do is, when we write—do an accident report, the person at fault, we issue a citation.” NE#1 said that the insurance agency later contacted him and told him that the son had been found at fault. NE#1 received a check but later found out that the son was alleging that NE#1 claimed damages that were not part of the accident. NE#1 is still awaiting a disposition of that issue.

When asked by OPA why he ultimately identified himself as a police officer in a text but not at the time of the accident, NE#1 stated: “I just wanted him to know who I was, and what I was going to be doing.” He said that he felt he should do so to prevent the son from later asserting that NE#1 used his authority inappropriately. NE#1 told OPA that no report was completed at the time of the accident because there were no injuries, both cars were drivable, and there was no dispute at that point. NE#1 said that he could not see how the son believed that NE#1 and the son were both switching lanes at the time of the accident. When asked whether it was common for citations to be mailed, NE#1 said that it happened “sometimes.” He told OPA that he felt a report needed to be made because the son was changing his story. When asked what “favor” he claimed to have provided the son, NE#1 stated the following: “I was trying to get him—allow him to get to his—take his friend to the airport. And, to not get a citation, if an officer would have showed up, taken a report, he would have gotten a citation for unsafe lane change.” Ultimately, NE#1 denied that he threatened the son with a citation, and he stated that he was not seeking trying to change the son’s account.

Text Messages Between the Son and NE#1

OPA lastly reviewed the text messages exchanged between NE#1 and the son. In the first text, NE#1 identified that the son had told the insurance agency that, at the time of the accident, both he and NE#1 were changing lanes and that, when the son moved over, NE#1 was in the son’s blind spot. NE#1 asked whether the account attributed to the son by the insurance agency was what the son had relayed or was a mistake. When the son confirmed that he provided the insurance agency with his recollection of what occurred, NE#1 disagreed with that recollection. He further identified himself as a police officer, told the son that he was going to file a report with SPD’s “accident investigation unit,” and stated that the son should expect to receive a citation in the mail.



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

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

SPD Policy 5.001-POL-10 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-10.)

It is undisputed that, at the time of the accident, NE#1 did not disclose that he was a police officer, he did not call for an officer to respond to the scene and no report was generated, and that he exchanged information with the son. It is further undisputed that, shortly after the accident, the son provided an account to his insurance agency indicating that he and NE#1 were both changing lanes at the time of the accident, thus calling into question whether the son was at fault. Lastly, it is undisputed that, at the point the son provided his alternate account of the cause of the accident, NE#1 told the son in a text that he was a police officer, that he was going to report the incident, and that the son was going to get a citation in the mail.

Based on a review of the totality of the evidence, OPA finds that NE#1’s statements were purposed to cause the son to change his account. In doing so, NE#1 inappropriately used his official position as a police officer and inaccurately stated that the son would be receiving a citation when this was not certain to be the case. This was particularly so as that there was no documentation of the underlying accident because NE#1 had not initially reported it.

The son described feeling threatened by NE#1’s text and OPA believes that a reasonable person in the son’s place would have considered this text to be coercive. As such, OPA concludes that NE#1 acted unprofessionally when, only after receiving a contrary account of the accident, he identified himself as a police officer and definitively told the son that he would be receiving a citation. Such conduct, in OPA’s opinion, undermines public trust and confidence in NE#1 and the Department. OPA further concludes that NE#1’s statements, which OPA finds were purposed to cause the son to recant his account, constituted NE#1 using his official position for personal gain.

For these reasons, OPA finds that NE#1 violated SPD Policy 5.001-POL-10 and SPD Policy 5.001-POL-13 and, accordingly, recommends that these allegations be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

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

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

As discussed above, given NE#1’s account provided at his Loudermill hearing, OPA no longer believes that this allegation is supported by a preponderance of the evidence. Instead, OPA recommends that this allegation be Not Sustained and issues the below Training Referral.



- **Training Referral:** NE#1's chain of command should discuss with him that, even if not his intent, his texts to the son could have been viewed as using his position for personal gain. NE#1 should be counseled to ensure that type of behavior is not revisited 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 14. Retaliation is prohibited

OPA finds that the conduct in this case is better captured by the Sustained findings issued in Allegation #1 and Allegation #2. As such, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**