



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 25, 2020

CASE NUMBER: 2019OPA-0561

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 14. Retaliation is prohibited	Sustained
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Imposed Discipline

Recommended Termination – Employee Previously Terminated as a result of 2018OOPA-1064

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 unprofessional conduct towards and retaliated against the anonymous complainant.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 14. Retaliation is prohibited

Named Employee #1 (NE#1) was the subject of a prior OPA investigation into social media posts that he made. OPA became aware of those social media posts based on a complaint that was submitted by an anonymous complainant. Those social media posts, which included a statement that was perceived by the Department to threaten and/or condone harm towards political figures, were deemed inappropriate and inconsistent with SPD policy. OPA recommended that NE#1 receive Sustained findings for that conduct. The Chief of Police agreed and terminated NE#1’s employment.

After NE#1 had been notified of the recommended Sustained findings against him but prior to discipline being imposed, NE#1 determined the identity of the then anonymous complainant and sent text messages to her. NE#1 wrote: “Damn...not cool.” He further stated: “I found your email address in the anonymous complaint against me. I’m getting punished with unpaid time off at work. Thanks a lot.” When the anonymous complaint asked who was texting her, NE#1 identified himself. He then wrote: “All good. Take it easy.” However, he ended the text exchange by writing: “omg [oh my god] what a cunt.”

The anonymous complainant contacted OPA and disclosed that she received these text messages. She also included screen shots of the text messages, which are included in OPA’s file. The anonymous complainant expressed that she was concerned by NE#1’s text messages and that she was afraid that she could be subject to “backlash” from NE#1 and other SPD officers. OPA’s investigation ensued.



As part of this investigation, OPA verified that the phone number from which the text messages to the anonymous complainant were sent was registered to NE#1. OPA also attempted to interview NE#1. At the time of the interview, NE#1's employment at SPD had been terminated; however, OPA still offered him the opportunity to provide his accounting of what occurred and scheduled him for an interview. NE#1 contacted the assigned OPA investigator in advance of his interview. NE#1 stated that he had been advised by the Guild to not appear for his OPA interview as he was no longer employed by SPD. The OPA investigator agreed that he was not required to appear and stated that the decision concerning whether to do so was up to NE#1. NE#1 discussed whether he should send a written statement to OPA and the OPA investigator told him that it was within his discretion to do so and that he should confer with the Guild and/or legal counsel. The OPA investigator reminded NE#1 that OPA could still make recommended findings even if NE#1 did not appear for his interview and NE#1 indicated that he understood. The OPA investigator confirmed with NE#1 that he would not be attending his interview. Lastly, the OPA investigator informed NE#1 that, to the extent he chose to do so later, an interview could be scheduled. NE#1 made no subsequent attempt to reschedule his interview and he ultimately declined to participate in this investigation.

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.*)

As discussed above, in the aftermath of receiving a recommended Sustained finding and proposed discipline and after learning the identity of the anonymous complainant, NE#1 contacted her. In the text messages he sent her, he told her that he knew she was the anonymous complainant, informed her that he was potentially being disciplined, and called her a "cunt." In response to those texts, the anonymous complainant felt threatened and was concerned that NE#1 or another officer would take adverse action against her as a result of her filing an OPA complaint.

Here, the anonymous complainant engaged in lawful, protected activity when she filed an OPA complaint against NE#1. Moreover, this complaint was permitted to be filed anonymously. NE#1's text messages to her were insulting and inappropriate. They were further intimidating as NE#1, who held a position of power as a police officer, was notifying an individual who chose to remain anonymous that he was aware of that person's identity. It was not unreasonable for the anonymous complainant to be afraid of NE#1, particularly given his reference to her as a "cunt." Further, NE#1 voluntarily chose not to participate in this investigation and declined to provide an explanation for his conduct and the texts that he sent. In the absence of any alternate account from NE#1, OPA concludes that the totality of the evidence supports a finding that NE#1 engaged in retaliation against the anonymous complainant.

For the above reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #2

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.) 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.*)

OPA concludes that NE#1 violated the Department’s professionalism policy when he texted the anonymous complainant and then insulted her by calling her a “cunt.” This conduct was the result of exceptionally bad judgement and was far outside of the expectations of the Department. First, the use of the slur “cunt” represented language that was derogatory, contemptuous, and disrespectful, as well as language that was directed as an insult towards the anonymous complainant. Second, the entirety of NE#1’s text messages undermined the clearly defined right of a complainant to remain anonymous, which is purposed to prevent exactly what occurred here. It is well understood by officers that such conduct is wholly inappropriate and NE#1 was on notice that this was the case. Indeed, this is the first time during this OPA administration that an officer has acted in this manner.

Ultimately, OPA finds that NE#1’s behavior violated multiple aspects of the Department’s professionalism policy and, as such, recommends that this allegation be Sustained.

Recommended Finding: **Sustained**