



CLOSED CASE SUMMARY

ISSUED DATE: MAY 13, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0432

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 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons	Sustained
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Named Employee #2

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 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons	Sustained
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Named Employee #3

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 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons	Sustained
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Named Employee #4

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 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons	Sustained
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained



Named Employee #5

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 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons	Sustained
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Named Employee #6

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 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons	Sustained
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Named Employee #7

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 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons	Sustained
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

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 multiple Named Employees used SPD precincts as their voting addresses and may have voted outside of their legal districts. It was further alleged that this conduct was contrary to law and SPD policies, as well as unprofessional.

ADMINISTRATIVE NOTE:

There is one additional Named Employee in this case who is presently out on long term leave. Given this, the portion of the investigation against him is currently tolled and findings will be issued in a separate DCM.



SUMMARY OF INVESTIGATION:

OPA received an anonymous complaint alleging that a number of SPD officers – the Named Employees – had registered to vote at SPD precincts rather than at residential addresses. It was further alleged that, by doing so, the Named Employees may have violated the law and SPD policy. This investigation ensued.

At the outset, OPA referred this matter to SPD for criminal investigation. SPD did not conduct any criminal investigation at all, citing to an SPD Captain's erroneous assertion that she was personally aware that the Named Employees lived within Seattle and to an ongoing investigation by the King County Department of Elections. No statement was provided by the Captain and her opinion regarding the residence status of the Named Employees was conveyed by a Lieutenant. The only "evidence" included with the criminal investigation was a news article from KOMO, which referenced an interview with a Department of Elections official. SPD returned the case to OPA and OPA commenced its administrative investigation.

OPA reviewed the RCW provisions governing voting and voting registrations. The following provisions were deemed relevant to this case:

- **RCW 29A.08.010:** A voter must register with a "residential address." The residential address provided "must identify the actual physical residence of the voter in Washington, as defined in RCW 29A.04.151, with detail sufficient to allow the voter to be assigned to the proper precinct and to locate the voter to confirm his or her residence for purposes of verifying qualification to vote under Article VI, section 1 of the state Constitution."
- **RCW 29A.04.151:** Residence is defined as "a person's permanent address where he or she physically resides and maintains his or her abode."
- **RCW 29A.08.230:** A voter who is registering must take an oath affirming the truth of the content of the registration form and stating that they have lived at their voting address for at least 30 days prior to submission of the form.
- **RCW 29A.84.130:** Instructs that an individual commits a voting violation by: "(1) Knowingly provid[ing] false information on an application for voter registration under any provision of this title."
- **RCW 29A.84.180:** Classifies a voting violation as a class C felony.

OPA identified that, at the time the complaint was made, all of the Named Employees were registered to vote at SPD precincts. In addition, OPA determined that only one, Named Employee #1 (NE#1), lived in the same district in which her precinct was located. Of the remaining Named Employees, OPA verified through records searches and interviews that: Named Employee #2 (NE#2), Named Employee #3 (NE#5), and Named Employee #7 (NE#7) lived outside of Seattle; and Named Employee #6 (NE#6) lived in Seattle but outside of the district of the precinct he was registered at. Named Employee #3 (NE#3) and Named Employee #4 (NE#4) were no longer employed by SPD at the time of this investigation and declined to be interviewed. However, OPA was able to verify through SPD Human Resources that NE#3 lived outside of Seattle and that NE#4 lived in Seattle but outside of the district of the precinct he was registered to.



OPA determined that the King County Department of Elections was conducting an investigation into the voting registration of the Named Employees and whether they engaged in voter fraud. As of the writing of this DCM, the Department of Elections investigation remained ongoing and, depending on findings, could result in a referral to a prosecutor for the filing of charges.

Lastly, OPA interviewed NE#1, NE#2, NE#5, NE#6, and NE#7. As noted above, NE#3 and NE#4 declined to be interviewed.

NE#1 confirmed that she resided in the same district at the precinct she to which she was registered. She recalled that, several years prior, she changed her voting registration to list the precinct. She told OPA that she was not aware of the State law prohibiting her from doing this. She denied any intent to violate voting laws and asserted that, as she voted in her proper assigned district, she technically did not act illegally.

NE#2 verified that he did not live in the district of the precinct at which he was registered and verified that he lived outside of Seattle. NE#2 also stated that he was unaware of the laws concerning voting registration and the prohibition on registering at the precinct. He stated that he registered at the precinct due to safety concerns and worries that people could find his address, putting him and his family at risk. He believed that he did so when he signed up for a Washington State driver's license. He said that this was something he had discussed with other officers. NE#2 stated that he had never voted before, which OPA confirmed through a records check.

NE#5 acknowledged that he was registered to vote at an SPD precinct and that he did not live within the confines of that precinct or, for that matter, within Seattle. He told OPA that, to his best recollection, he was automatically registered to vote at the precinct when he obtained a Washington State driver's license approximately 25 years ago. He did not remember individually registering the precinct as his voter address.

NE#6 confirmed that he lived in Seattle, but not in the district of the precinct he was registered at. He told OPA that it was commonplace for officers to do this, as well as to also use precincts as the addresses for driver's licenses and car registrations. NE#6 referenced SPD Policy 1.329(4) from June 2003 and that this policy permitted officers to use the precinct address for a vehicle registration; however, even under NE#6's recitation of this policy, it did not allow for a precinct to be used for a voter registration. NE#6 said that he did not know at the time that registering to vote at the precinct was a problem. He explained that some officers did this for safety reasons and that there were real concerns that officers could be doxxed and their personal addresses made public. He noted that protestors had come to his home in the past. He further was not aware that he had to individually update his voter registration address with the Washington Secretary of State, rather than it automatically updating when he changed his car registration and driver's license address. NE#6 indicated that he had voted in past elections.

NE#7 said that she previously lived in Seattle but that she moved outside of the city between five to six years ago. She stated that she used an SPD precinct that she had previously worked at to receive mail and for her driver's license. She told OPA that she did so for officer safety reasons. She believed that she was automatically registered to vote at that address as a function of her driver's license, but she was not sure that this was the case. She had no recollection of independently submitting a voter registration in which she listed the precinct as her address. While she confirmed that she voted, she did not have a recollection of recently voting in local-level elections.

Based on the contention by several of the officers that they may have been inadvertently registered to vote at a precinct due to their usage of the precinct for a vehicle registration or a driver's license, OPA examined the law in



this area. OPA determined that RCW 29A.08.340 governs registering to vote or updating a voter registration at the same time as registering a vehicle or obtaining a Washington State driver's license. RCW 29A.08.340 indicates that, to do so, a separate application is required, including the provision of a personal address, and attesting to the accuracy of that information. The voter registration application is further recorded and entered separately.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. Included in the ambit of this policy is compliance with Washington State and local laws concerning voting and voting registration.

As discussed herein, it is undisputed that all of the Named Employees used precincts for their voting addresses. Moreover, it is undisputed that all of the Named Employees – with the exception of NE#1 – did not live in the districts in which they were registered to vote.

This was contrary to both RCW 29A.08.010 and 29A.08.230, which require registration at a “residential address” and the attestation to the accuracy of the information provided under oath, respectively. The open question is whether the Named Employees’ actions constituted the “knowing” provision of inaccurate information. Stated differently, to establish criminal liability, it must be established that the Named Employees had criminal intent. In evaluating this allegation, OPA distinguishes between the improper registration, which is covered more fully in the context of Allegations #2 and #3 below, and voter fraud. Per the King County Board of Elections, improper registrations are not “super uncommon” and “really the fraud that [the Board of Elections] focus on is if people vote in two different places.” As further explained by the Board of Elections: “It’s very, very unlikely this would be prosecuted. In all likelihood, we would not even refer it to a prosecutor, because for them to do that prosecution is pretty high...These officers] would need to re-register with their correct address.”

All of the Named Employees interviewed denied intentionally violating the law. All stated that they were not aware of the requirements surrounding their voter registrations and several indicated their beliefs that their voter registrations were updated automatically when they registered a vehicle and/or obtained a driver's license. While OPA cannot definitively prove the Named Employees’ lack of awareness, the assertion that their voter registrations were automatically set appears to be contradicted by the plain language of 29A.08.340.

OPA does not possess expertise in the investigation in or prosecution of voter violations. This is within the purview of the King County Board of Elections and/or the County Auditor. Moreover, based on OPA’s reading of RCW 29A.08.010, these entities have sole jurisdiction to investigate these cases and, if criminal conduct is determined, to refer them to a prosecuting attorney. Given this, as well as due to the fact that the Board of Elections’ investigation is still pending, OPA declines at this point to opine on whether the Named Employees engaged in intentional voter fraud as contemplated by the RCW.

To the extent the Board of Elections determines that they did so and the cases against them are referred to a prosecuting attorney and result in a plea or conviction, OPA will exercise its jurisdiction at that time. Notably, Section 3.6(B) of the collective bargaining agreement between the City of Seattle and the Seattle Police Officers’ Guild specifically authorizes this (“*Provided, however, in the case of a criminal conviction, nothing shall prevent the*



Department from taking appropriate disciplinary action within forty-five (45) days, and on the basis of, the judicial acceptance of a guilty plea (or judicial equivalent such as nolo contendere) or sentencing for a criminal conviction.”).

Until that time, however, OPA recommends that this allegation be Not Sustained – Inconclusive as against all of the Named Employees.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons

SPD Policy 5.001-POL-20 prohibits Department employees from using a Department mailing address for personal reasons. Unlike the past SPD policy cited by NE#6, there is no exemption for vehicle registrations. Indeed, the current policy explicitly states that the prohibition extends to “using a Department address for a driver license, vehicle registration, telephone service, etc..”

Even if the officers relied on a past policy to provide a justification for registering their vehicles at a precinct, that policy did not allow for officers to use a precinct for their voting address. All of the Named Employees did so here. This was improper. This determination does not change for NE#1 who lived in the district of the precinct she was registered at. She still was not permitted by policy to use the precinct as her voting address.

In addition, while several of the Named Employees indicated that their voting registrations may have been automatically set when they registered their vehicles and/or obtained Washington State driver’s licenses, this does not appear to be supported by the plain language of the law. As indicated above, RCW 29A.08.340 is clear that, while such registrations can be performed together, it is a separate application that requires a separate oath of attestation.

Lastly, while OPA is sympathetic to concerns of officer safety, the appropriate remedy for the Named Employees was to advocate for changes in the law to increase protections of their addresses, not to act contrary to existing law.

As indicated above, the Named Employees were established to have violated this policy. As such, OPA recommends that this allegation be Sustained against all of them.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

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.)

For all of the Named Employees, OPA finds that their use of precincts for their voting registrations also violated the Department’s professionalism policy. In evaluating this allegation, OPA concludes that, by acting directly contrary to law and policy, the Named Employees undermined public trust and confidence in themselves and in the



Department. This is the case even if criminal liability cannot be proved because of the higher evidentiary burden required to establish intent. Similarly, this is the case even if the Named Employees lived within the City or in the same district as the precinct they were registered at.

Ultimately, as the Named Employees well know, ignorance of the law is not a defense. This is especially the case for police officers who are entrusted with the responsibility of enforcing it. Everyone, including law enforcement officers, is and should be equal under the law and held to the same standards. This informs OPA's determination that a finding that the Named Employees violated this policy is warranted here.

For these reasons, OPA recommends that this allegation be Sustained as against all of the Named Employees.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained - Inconclusive.

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

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #3

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

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained - Inconclusive.

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



Named Employee #3 - Allegation #2

5.001 - Standards and Duties 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #3 - Allegation #3

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

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #4 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained - Inconclusive.

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

Named Employee #4 - Allegation #2

5.001 - Standards and Duties 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #4 - Allegation #3

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

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #5 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained - Inconclusive.



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

Named Employee #5 - Allegation #2

5.001 - Standards and Duties 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #5 - Allegation #3

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

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #6 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained - Inconclusive.

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

Named Employee #6 - Allegation #2

5.001 - Standards and Duties 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #6 - Allegation #3

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

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**



Named Employee #7 - Allegation #1

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

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained - Inconclusive.

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

Named Employee #7 - Allegation #2

5.001 - Standards and Duties 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #7 - Allegation #3

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

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**