



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2016-0281

Issued Date: 10/25/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 5.001 (V) Standards & Duties: Honesty (Policy that was issued 08/15/2012)
OPA Finding	Sustained
Final Finding	Not Sustained - Timeliness
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employee responded to a traffic incident in 2013.

COMPLAINT

The complainant, a supervisor within the Department, alleged that the Named Employee may have made a false statement to her sergeant during a traffic incident in 2013.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint email
2. Interview of witnesses
3. Review of In-Car Video (ICV)
4. Search for and review of all relevant records and other evidence
5. Interviews of SPD employees

ANALYSIS AND CONCLUSION

The complainant alleged that the Named Employee was neither truthful nor complete in her oral and written statements concerning what she saw and did on or about February 27, 2013, in connection with a suspect vehicle from a pursuit. In-car video (ICV) recorded by the Named Employee on that day clearly shows the Named Employee telling her supervisor, a Seattle Police Department (SPD) sergeant, "The news crew was here going through the car." The sergeant responded, "The news crew?" The Named Employee replied, "Yes, they opened up that door." At the time the Named Employee said this, her police vehicle was parked behind and slightly to the left of a white sedan, the suspect vehicle in a pursuit just minutes earlier. The Named Employee's ICV shows the driver's side front door standing open on the white car as the Named Employee tells her sergeant that the news crew "opened up that door." Less than three minutes before the Named Employee tells her supervisor that the news crew had opened up "that door," the Named Employee can be seen opening the driver's door and leaving it open. The OPA investigation into this allegation was unable to produce any evidence to support the statement that a "news crew" had either opened the door of the white sedan or been "going through" the car. In fact, the Named Employee told OPA in her interview that she never saw any member of a news crew of inside of the white sedan or opening any of its doors. The sergeant also told OPA he did not see anyone inside the white sedan or opening any of its doors.

SPD Policy 5.001(V) in effect at the time of this incident states, "employees shall be truthful and complete in all official oral and written communications, statements, reports, testimony, official administrative and employment records."

The evidence from this investigation is clear and convincing that, when the Named Employee told her sergeant the news crew had "gone through the car" and had opened one of its doors, she had no reason to believe that any person from a news crew opened any of the white sedan's doors or was ever inside the sedan. Instead, just minutes earlier it was the Named Employee who opened the white sedan's doors and went inside. These two statements were made by the Named Employee to her supervisor as part of her oral report to him about the incident and what she had observed. These two statements were untrue and the Named Employee knew or should have known they were not true at the time she made them. The Named Employee told OPA she made these statements "in the heat of the moment" and was not referring to the open driver's door, but was thinking of having seen the reporter next to the passenger (right) side of the white sedan. However, the Named Employee told OPA she never saw the reporter or the videographer open any of the white sedan's doors and she never saw either of them inside the car. The Named Employee opened the driver's door just three minutes before she told her supervisor the news crew had "opened that door." The Named Employee's use of the phrase "they opened up that door" when the driver's door of the white sedan was standing open would lead a reasonable person to assume the Named Employee was referring to the open driver's door. These statements by the Named Employee to her supervisor were untrue and the Named Employee knew she was not being truthful.

The Named Employee's false statements to her supervisor regarding the interaction of one or more bystanders with potential evidence in a criminal investigation were not inconsequential. Had the white sedan or any item inside it become crucial evidence in a criminal investigation, the fact that a bystander may have touched or in some way removed or altered the evidence could be of extreme importance in any subsequent criminal proceeding. In addition, news reporters and videographers rely on having working relationships with local law enforcement based on trust and appropriate respect for boundaries. The accusation that a reporter disturbed evidence or violated the boundaries of a crime scene could have serious negative consequences for the reporter's future ability to work with law enforcement.

For the reasons stated above, the OPA Director recommended a finding of Sustained for this allegation.

The Chief of Police recognized that her ability to make a sustained finding and impose discipline is limited by the collective bargaining agreement between the City and the Seattle Police Officer's Guild. The complaint in this matter was received by OPA just over three years from the date of the at issue incident. Because the collective bargaining agreements at Article 3.6(G) prohibits disciplinary action resulting from "a complaint of misconduct where the complaint is made to the Internal Investigations Section more than three years after the date of the incident which gave rise to the complaint" and a labor arbitrator has interpreted this provision of the collective bargaining agreement to equate a sustained finding to discipline, the Chief of Police cannot implement discipline or make a sustained finding in this matter. The Chief of Police has determined that the finding in this matter will be "Not Sustained – Timeliness".

FINDINGS

Named Employee #1

Allegation #1

The evidence supports that Named Employee #1 violated the policy. Therefore a finding of **Not Sustained** (Timeliness) was issued for *Standards & Duties: Honesty*.

See attached letter from Chief O'Toole to Mayor Murray and Council President Harrell.

NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.



City of Seattle

Seattle Police Department

October 27, 2016

Mayor Ed Murray
Seattle City Hall
600 4th Avenue
Seattle, WA 98124-4769

Council President Bruce A. Harrell
Seattle City Hall
600 4th Avenue
Seattle, WA 98124-4769

RE: OPA 2016-0281

Dear Mayor Murray and Council President Harrell:

I am writing to report on the findings in OPA 2016-0281, pursuant to SMC 3.28.812. The incident in question occurred on February 27, 2013. OPA received the complaint that led to this investigation on March 17, 2016, nearly three years and one month after the date of the incident. The collective bargaining agreement (CBA) between the Seattle Police Officers' Guild (SPOG) and the City prevents "disciplinary action resulting from a complaint of misconduct where the complaint is made to the Internal Investigations Section more than three years after the date of the incident which gave rise to the complaint" (SPOG CBA Article 3.6(G)) and a labor arbitrator has interpreted the City's CBA with SPOG to preclude the Chief of Police from issuing a "sustained" finding in a case where the at-issue incident occurred over three years before the complaint was filed; a sustained finding itself was characterized as disciplinary. It was determined that I am bound by the City's CBA with SPOG and the labor arbitrator's decision. As such, I did not evaluate the merits of this allegation and made a finding in this matter of "Not Sustained – Timeliness". As the matter involved an allegation of dishonesty, the investigation has been referred to the local prosecuting authorities for evaluation under *Brady v. Maryland*, 373 U.S. 83 (1963).

I must mention that this same incident was the subject of a previous complaint and investigation. There OPA focused on offensive and racially charged language used by the officer. In that instance, the complaint was received within the three year timeframe; I sustained the policy violation and more than doubled the recommended discipline as I was appalled by the officer's language. Where the collective bargaining agreement permits, I do not shy away from evaluating cases on their merits and holding officers fully accountable for their actions.



City of Seattle

Seattle Police Department

Sincerely,

A handwritten signature in cursive script that reads "Kathleen M. O'Toole".

Kathleen M. O'Toole
Chief of Police

cc: Peter Holmes, Seattle City Attorney
Pierce Murphy, Director Office of Professional Accountability
Sally Bagshaw, Councilmember
Tim Burgess, Councilmember
Lisa Herbold, Councilmember
Lorena Gonzalez, Councilmember
Rob Johnson, Councilmember
Debora Juarez, Councilmember
Mike O'Brien, Councilmember
Kshama Sawant, Councilmember
File