



## OFFICE OF PROFESSIONAL ACCOUNTABILITY

### Closed Case Summary

Complaint Number OPA#2016-0548

Issued Date: 12/23/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 5.001 (V) Standards and Duties: Honesty (Policy that was issued August 15, 2012)
OPA Finding	<b>Not Sustained</b> (Unfounded)
Allegation #2	<u>Seattle Police Department Manual</u> 5.002 (II. C.) Public and Internal Complaint Process: An employee who witnesses or becomes aware of misconduct or a complaint of misconduct, shall, in all cases, take appropriate action to prevent aggravation of the incident or the loss of evidence that could prove or disprove the misconduct (Policy that was issued January 23, 2012)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Final Discipline	N/A

Named Employee #2	
Allegation #1	<u>Seattle Police Department Manual</u> 5.002 (II. C.) Public and Internal Complaint Process: An employee who witnesses or becomes aware of misconduct or a complaint of misconduct, shall, in all cases, take appropriate action to prevent aggravation of the incident or the loss of evidence that could prove or disprove the misconduct (Policy that was issued January 23, 2012)
OPA Finding	<b>Not Sustained</b> (Training Referral)

Allegation #2	<u>Seattle Police Department Manual</u> 5.040 (4) EEO Complaints and Investigations: Supervisors and Managers Shall Immediately Take Action When There is an Indication That Harassment May Be Occurring (Policy that was issued April 17, 2013)
OPA Finding	<b>Not Sustained</b> (Training Referral)
Final Discipline	N/A

### **INCIDENT SYNOPSIS**

The Named Employees were involved in previous complaints.

### **COMPLAINT**

The complainant, an officer within the Department, alleged Named Employee #1:

- 1) Did not disclose existence of texts/note about texts during an interview.
- 2) Knowingly and purposefully altered or fabricated notes about texts.
- 3) Was dishonest in an interview when (1) answering questions posed about the note regarding the text, and (2) indicating the comment made by the complainant was at a certain time, when he previously stated it was at a different time.
- 4) Failed to prevent the loss or destruction of evidence (text messages) that could prove or disprove misconduct.

The complainant alleged Named Employee #2:

- 1) Failed to take immediate action when Named Employee #1 sent him a text message regarding the complainant.
- 2) Failed to prevent the loss or destruction of evidence (text messages) of that could prove or disprove misconduct.

### **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of the complaint memo
2. Review of previous complaint
3. Search for and review of all relevant records and other evidence
4. Interviews of SPD employees

## **ANALYSIS AND CONCLUSION**

The complainant alleged Named Employee #1 was dishonest in the following ways in connection with prior internal investigations: (a) that Named Employee #1 did not provide the investigator with relevant text messages when asked during an initial investigation; (b) that Named Employee #1 altered an iPhone note on his own phone prior to providing an OPA investigator with a copy of that note; and (c) that Named Employee #1 provided false and/ or contradictory information during interviews with internal investigators concerning the time he witnessed the alleged misconduct by the complainant.

In response to these allegations, Named Employee #1 stated the following:

- (a) He provided all text messages he was asked to provide during the initial investigation, and used a filter to provide all texts to Named Employee #2, while preventing the disclosure of private numbers as he was told by the internal investigator he did not need to provide all the numbers called or texted that day;
- (b) Named Employee #1 acknowledged altering the phone note, not to change the content of the note, but to add a title so he could better track it in his list; this was made clear by Named Employee #1 at the time of the prior internal investigation; he never represented the note to be unchanged in any way since he first created it; the icons on the note submitted by Named Employee #1 to the internal investigators and the icons the complainant observed on his phone were different, a fact that could be explained by differences in versions of the phone operating system (an earlier version contemporaneous with the date of the initial incident displayed icons in the same order as the note submitted by Named Employee #1) and Named Employee #1 denied any tampering with the icons;
- (c) In the prior investigations, Named Employee #1 provided two different times in two different interviews. The exact time the phone note was created had always been in question. Named Employee #1 stated in one interview that he created the note immediately after he sent a text to Named Employee #2 and in another interview that he created the note the night of the incident. This was not considered a material difference as the exact time the note was created was not relevant to the issue at hand in the initial OPA investigation. The note was only relevant as evidence in so far as it corroborated Named Employee #1's recollection of what the complainant allegedly said and was consistent with the content of the text sent by Named Employee #1 to Named Employee #2 shortly after the comment was allegedly uttered by the complainant. During this current investigation Named Employee #1 stated that he created the note based on an approximate time based on his memory and by referencing the time he sent the text to Named Employee #2 and when he created the note. Named Employee #1 had consistently told the various investigators that his recollection of the time was imprecise.

Other than the complainant's belief Named Employee #1 had been dishonest, there was no evidence to support this allegation.

Named Employee #1 failed to secure the text messages sent to Named Employee #2. Named Employee #1 indicated that it was his long standing pattern and practice to delete all text messages on his personal cell phone at the end of each day. It seemed clear that Named Employee #1 recognized that the alleged statement by the complainant was a potential act of misconduct. Even though the text sent by Named Employee #1 to Named Employee #2 was on Named Employee #1's personal cell phone, he should have preserved it as evidence of that alleged misconduct. Fortunately, Named Employee #2 retained the text and provided it for the subsequent OPA investigation.

Named Employee #2 preserved the text message sent to him by Named Employee #1 and was able to make it available to OPA during the previous OPA investigation. Named Employee #2 did not direct Named Employee #1 to preserve and not alter any evidence of that potential misconduct. As a supervisor, Named Employee #2 should have been particularly conscious of the need to preserve evidence of potential misconduct.

While Named Employee #2 did not, himself, report the potential misconduct to OPA, he did direct Named Employee #1 to report the alleged misconduct to OPA. Named Employee #1 did report the alleged misconduct to OPA. Named Employee #2 believed he had satisfied this requirement of the policy by telling Named Employee #1 to report what happened to OPA. As a supervisor, Named Employee #2 should have contacted OPA himself to make certain the allegation was received.

## **FINDINGS**

### **Named Employee #1**

#### Allegation #1

Other than the complainant's belief Named Employee #1 had been dishonest, there was no evidence to support this allegation. Therefore a finding of **Not Sustained** (Unfounded) was issued for *Standards and Duties: Honesty*.

#### Allegation #2

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Public and Internal Complaint Process: An employee who witnesses or becomes aware of misconduct or a complaint of misconduct, shall, in all cases, take appropriate action to prevent aggravation of the incident or the loss of evidence that could prove or disprove the misconduct.*

**Required Training:** Named Employee #1 should receive specific training and instructions from his supervisor regarding the obligation to take appropriate action to prevent the loss of evidence that could prove or disprove misconduct.

## **Named Employee #2**

### Allegation #1

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Public and Internal Complaint Process: An employee who witnesses or becomes aware of misconduct or a complaint of misconduct, shall, in all cases, take appropriate action to prevent aggravation of the incident or the loss of evidence that could prove or disprove the misconduct.*

**Required Training:** See “Required Training” for allegation #2, below.

### Allegation #2

The evidence showed that the Named Employee would benefit from additional training. Therefore a finding of **Not Sustained** (Training Referral) was issued for *EEO Complaints and Investigations: Supervisors and Managers Shall Immediately Take Action When There is an Indication That Harassment May Be Occurring.*

**Required Training:** Named Employee #1 should receive specific training and instructions from his supervisor regarding: (a) the obligation to take appropriate action to prevent the loss of evidence that could prove or disprove misconduct and (b) the obligations of a supervisor to report misconduct.

*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.*