



CLOSED CASE SUMMARY

ISSUED DATE: JUNE 1, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2017OPA-0407

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 12. Employees Shall Not Use Their Position or Authority for Personal Gain	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Not Sustained (Timeliness)
# 4	5.001 - Standards and Duties 13. Retaliation is prohibited	Not Sustained (Unfounded)
# 5	5.120-POL-2 Restrictions on Off-Duty Employment 1. The Department Prohibits Certain Employment	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 12. Employees Shall Not Use Their Position or Authority for Personal Gain	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Allegation Removed
# 3	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Allegation Removed
# 4	5.001 - Standards and Duties 13. Retaliation is prohibited	Allegation Removed
# 5	5.120-POL-2 Restrictions on Off-Duty Employment 1. The Department Prohibits Certain Employment	Allegation Removed

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 Complainants alleged that the Named Employee stated he and other officers colluded to extort various businesses for higher hourly pay for secondary employment.

ADMINISTRATIVE NOTE:

OPA issues findings in this case outside of the 180-day timeline imposed by the collective bargaining agreement between the City and SPOG. OPA regrets the delay in completing this case, which has been pending since 2017. For



this reason, one finding in this case is issued as Not Sustained for reasons of timeliness. Had OPA timely issued its findings, it would have recommended that this finding be Sustained.

SUMMARY OF INVESTIGATION:

The Complainants in this case are owners of Cops for Hire, a company which connects businesses with police officers seeking to work secondary employment as traffic flaggers. On April 4, 2017, the Complainants met with SPD senior leadership to conduct market research and understand the policies surrounding secondary employment for SPD officers. After that meeting concluded the Complainants noticed Named Employee #1 (NE#1), who was then flagging traffic at the Columbia Tower. The Complainants approached NE#1 and spoke to him regarding their efforts to enter the Seattle secondary employment market.

During that conversation, the Complainants alleged that NE#1 made the following statements of concern. After they explained their business model to NE#1, the Complainants alleged that he told them their first mistake was attempting to manage secondary employment through the “eighth floor.” NE#1 allegedly stated that he “[didn’t] give a fuck how they [eighth floor] think[] off-duty is managed,” and repeatedly stated “fuck the eighth floor.” (Note: the “eighth floor” refers to SPD senior leadership inclusive of the Chief of Police, Deputy Chief, and assistant chiefs located on the eighth floor of SPD Headquarters). The Complainants also alleged that NE#1 made reference to a “mini-mafia” and “breaking legs,” and that managers of SPD off-duty work had a lot to lose and would react negatively to Cops for Hire’s entry into the Seattle secondary employment market or other efforts to “mess with” off duty jobs as they currently exist. The Complainants further alleged that NE#1 discussed “cake jobs” for entities like Seattle City Light, which were billed and paid as four hour jobs but which involved only one to two hours of work for the off-duty officer. They alleged that NE#1 said “we would really break some bones” if those jobs were affected, and that NE#1 said nobody would mess with these jobs “if they know what’s good for them.”

Finally, the Complainants alleged that NE#1 described a business strategy which he used to increase his hourly pay rate for secondary employment. He stated that when seeking a raise, he would bypass the companies which managed parking garages and deal directly with the owners of the office buildings. The Complainants stated that NE#1 said if the building managers refused to pay an increased rate, he would refuse to work and would ensure that no other officers worked as flaggers at that location. After 1-2 days without a flagger and complaints from tenants, NE#1 allegedly stated that building management would inevitably contact him and offer to pay the increased rate. The Complainants stated that they interpreted NE#1’s statements as admitting to extortion and other criminal behavior. They stated that these admissions were consistent with a culture of fear which they allegedly observed dealing with business owners who felt extorted by unknown officers in SPD.

The Complainants reported their concerns to SPD management and to OPA. Then-Chief of Police Kathleen O’Toole also notified OPA that SPD made a criminal referral to the FBI for investigation of potential criminal activity. The FBI’s investigation did not identify any criminal violations, and this OPA investigation subsequently ensued.

During its investigation, OPA interviewed the Complainants. They stated that their market research in Seattle determined that SPD employees referring to themselves as “managers” coordinated or managed “small groups” of officers to provide flagging services to businesses. They described meeting with an anonymous CEO of a “large corporation” who described his frustration with how secondary employment is managed in Seattle and allegedly expressed a belief that it was like dealing with “the mafioso.”



OPA interviewed the CEO of Seattle's Finest, a staffing company which managed secondary employment at Columbia Tower and employed NE#1. Seattle's Finest began managing the officers who flagged at Columbia Tower in 2016, after NE#1 approached the company to take over the contract. The CEO of Seattle's Finest stated that his company took over the contract because officers had previously been employed as "1099" or independent contractors, meaning they lacked liability insurance as employees. He stated that the Columbia Tower contract was the only one NE#1 had approached him with.

OPA also interviewed the current manager of Columbia Tower. The manager, who was relatively new in his position, stated that he had recently become aware that traffic flaggers were not always present for the full four hours that Columbia Tower had contracted for five days a week. He stated that the contract for flaggers was for between 3pm and 7pm every weekday, however he had personally observed instances where flaggers were not present during those hours. When he looked into the matter, the manager learned that this was consistent with existing practices at Columbia Tower.

OPA obtained department emails between NE#1 and the Columbia Tower management and the owner of Seattle's Finest. In the emails, NE#1 referred to the management company of the Columbia Tower garage. He stated that the garage management company was attempting to "screw with [his] livelihood" in order to win the garage management contract. He also stated in reference to an individual who worked at the management company that "if he doesn't know what a police carotid choke hold is – he will when he wakes up and sees me standing there :) [sic]." In one email, he apologized to the owner of Seattle's Finest for a heated exchange.

OPA attempted to identify other business owners and individuals who were alleged to have had negative interactions with SPD employees. The businesses contacted by OPA declined to be interviewed for this investigation unless OPA could promise complete confidentiality. Under the Public Records Act, OPA is unable to offer complete confidentiality and consequently, was unable to interview the individuals.

OPA interviewed NE#1. During his interview, NE#1 explained that he worked at two main off-duty locations, Columbia Tower and the Russell Investments building. He had been at Columbia Tower for 13 years and was one of only a few officers willing and able to work that location due to heavy traffic. NE#1 explained that part of the difficulty with finding officers to work that location off-duty was that they were hesitant to work the location as independent contractors. As a result, NE#1 stated that he approached Seattle's Finest to take over management of flagging. Seattle's Finest agreed to hire NE#1 as a regular employee (NE#1 referred to himself as a "W-2" employee) at the same rate he had worked prior. Because Seattle's Finest contracted in four-hour "shifts," NE#1 explained that he, Seattle's Finest, and Columbia Tower management agreed to a system under which NE#1 would be paid for four hours of work with an agreement that he would often work fewer hours as dictated by traffic. NE#1 stated that the Columbia Tower's former management team (individuals with whom NE#1 exchanged emails obtained by OPA) was comfortable with this arrangement.

NE#1 explained that the emails obtained by OPA related to the bidding process between contractors seeking to manage Columbia Tower's garage operations. The garage managers, which were separate entities from the Tower management, sought to provide lowest-cost bids to Tower management and in doing so proposed cuts to the cost of hiring off-duty officers. NE#1 exchanged emails with the Columbia Tower management in which he requested their assistance in protecting his contract as it existed, rather than paying a lower rate or requiring all four hours of contracted work at the existing rate. In response to specific questions by OPA, NE#1 stated that his email relating to a "carotid choke hold" referenced his frustration with garage management's attempts to modify his conditions of work.



He stated that the statement was not intended to be serious. He explained that due to his 13 years of employment by Columbia Tower he had a friendly relationship with its management team.

NE#1 also stated that he did not manage other officers' off-duty employment and did not work with other officers to deny flagging services to businesses. He explained that in connection with his work at Columbia Tower, he had spoken to other SPD employees to see if any of them would agree to work that location with him. He stated that most officers declined because of the high traffic and the danger posed by motorists. He also stated that no officers would agree to work that location as independent contractors, causing him to approach Seattle's Finest approximately three years ago. He said that he did not generally negotiate his own pay, but that he did negotiate the arrangement with Seattle's Finest and Tower management to work fewer than four hours.

NE#1 explained the context of his conversation with Cops for Hire employees, who are this case's Complainants. He said that he attempted to explain to the Complainants why employing officers as independent contractors ("1099s") would be viewed unfavorably by employees. He stated that his comments about the "eighth floor" and the "mafia" were intended to explain to the Complainants that SPD leadership and the City government did not understand the marketplace for off-duty employment. NE#1 stated that in his opinion, which he related to the Complainants, City government viewed off-duty employment as a "mafia" and were suspicious of the practice, but that he was unaware of any SPD employees colluding to raise rates or obtain additional consideration from businesses. NE#1 stated that some of his comments in the emails and to the Complainants potentially violated SPD's professionalism policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 12. Employees Shall Not Use Their Position or Authority for Personal Gain

SPD employees are prohibited from using their position or authority for personal gain. (SPD Policy 5.001-POL-12.) Had NE#1 exerted influence with other officers to prevent them from taking jobs at a market rate, that action would violate this policy.

OPA found insufficient evidence to suggest that NE#1 used his relationships within SPD to prevent SPD employees from working at a lower rate than he was prepared to accept for himself. Rather, the testimony of the owner of Seattle's Finest suggested that NE#1 tried to secure his company's involvement in order to make working at Columbia tower more attractive, rather than less, to his fellow officers. Insofar as this is backed up by NE#1's statements and the content of his emails with Columbia Tower management, OPA finds that the evidence does not suggest NE#1 tried to artificially raise the cost of his services or extort additional consideration from Columbia Tower or the garage managers. To the extent that NE#1's statements to the Complainants appeared to suggest such a scheme, OPA finds it more probable than not that NE#1's statements, while irresponsible, were not intended to be true and accurate descriptions of a business practice but were rather exaggerations made for their effect on the listener. Therefore, while OPA finds them troubling on their face, they do not provide sufficient evidence to suggest that NE#1 was using his position for personal gain. As a result, OPA recommends that this allegation be Not Sustained – Unfounded as against NE#1.

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

Named Employee #1 - Allegation #2



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. To the extent that the Complainants alleged NE#1 was engaged in extortion, that allegation if true would be a crime.

For much the same reasons as above (see Named Employee #1 – Allegation #1), OPA finds insufficient evidence to suggest that NE#1 violated the law. In addition, SPD referred this allegation for criminal investigation by the FBI, which conducted an independent investigation and was unable to find sufficient evidence for criminal prosecution. While that is not, in itself, sufficient reason for OPA to reach a like finding, OPA's inability to identify any additional information tending to suggest criminal activity by NE#1 means that we reach the same result. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against NE#1.

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-9 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-9.) 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.*) Lastly, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” (*Id.*)

OPA finds that NE#1's comments to the Complainants, as well as several statements he made in emails to members of the public violated SPD's professionalism policy. On multiple occasions, both in conversation with the Complainants and in emails with members of the public, NE#1 used profanity and conveyed contempt for SPD command staff as well as various individuals involved in Columbia Tower's garage management. The Complainants perceived various statements by NE#1 to be admissions of criminal activity, or at least threatening.

While OPA understands that NE#1's statements and emails were not intended to convey threats or admissions of criminal activity, their total effect was to give rise to several news articles detrimental to the Department's reputation, a Mayoral order and task force, and an FBI investigation. All of this undermined public confidence in the Department, its officers, and NE#1 himself. For these reasons, OPA would normally recommend that this allegation be Sustained. However, due to OPA's delay in addressing this case, a Sustained finding is precluded by collective bargaining agreement. Accordingly, OPA recommends that this allegation be Not Sustained for reason of timeliness.

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

Named Employee #1 - Allegation #4

5.001 - Standards and Duties 13. Retaliation is prohibited

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-13.) 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.*)

While many of NE#1’s statements gave rise to a reasonable belief that he or other officers were engaging in retaliatory behavior, OPA’s investigation did not identify any act or omission by NE#1 which could be described as retaliatory. While NE#1 voiced his disagreement with the business practices of certain private parties and requested that others do business in a manner that benefitted him, that conduct was not clearly intended to harm anyone. In addition, OPA uncovered no evidence suggesting that NE#1 attempted to convince other SPD employees to refuse to work any off-duty employment so as to punish businesses who did not cooperate with him, as alleged. For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against NE#1.

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

Named Employee #1 - Allegation #5

5.120-POL-2 Restrictions on Off-Duty Employment 1. The Department Prohibits Certain Employment

SPD Policy 5.120-POL-2 states that “the Department prohibits its employees from participating in secondary employment having a potential for conflicts of interest, the appearance of conflicts of interest, or that would tend to lower the dignity of the profession.” (SPD Policy 5.120-POL-2). It imposes several restrictions to further the goals of the policy, including that officers not pursue non-law enforcement work while in uniform. *Id.*

OPA has insufficient evidence to conclude that NE#1 violated this policy. First, OPA found no indication that NE#1 mixed his off- and on-duty work or used on-duty time to carry out a scheme with his colleagues to extort additional money from off-duty employers. Second, while NE#1’s statements gave the appearance of a conflict of interest, OPA does not find that any of his actions contributed to such a conflict or were inconsistent with employment as a law enforcement officer. As such, while OPA finds NE#1’s statements to have been unwise and unprofessional, they did not themselves create a conflict of interest. For this reason, OPA recommends that this allegation be Not Sustained – Unfounded as against NE#1.

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

Named Employee #2 - Allegation #1

5.001 - Standards and Duties 12. Employees Shall Not Use Their Position or Authority for Personal Gain

In addition to the allegations against NE#1, the Complainants alleged that other business owners had conveyed to them feelings of intimidation that they said were created by officers who colluded to increase their off-duty earnings. This claim was investigated by the FBI and the U.S. Attorney for the Western District of Washington, and insufficient evidence was found to support a criminal filing.

OPA’s own investigation into this issue was hindered by the fact that those business owners OPA contacted refused to discuss the matter unless OPA could guarantee full confidentiality, a request which could be inconsistent with OPA’s duties under the Public Records Act. For this reason, OPA was unable to learn the extent of their concerns and lacks sufficient information to evaluate whether the complained-of conduct rises to the level of abuse of authority or, on the other hand, reflects only dissatisfaction with the way off-duty employment is sometimes managed. For this reason, OPA cannot reach the required preponderance of evidence to determine that SPD employees are or are



not following policy. As such, OPA recommends that this allegation be Not Sustained – Inconclusive as against the unknown employees whose conduct provoked the Complainants’ and business owner concerns.

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

Named Employee #2 - Allegation #2

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

For the same reasons as above (see Named Employee #2 – Allegation #1), OPA lacks sufficient evidence to evaluate the conduct of officers and determine whether it violates policy or the law. To the extent that OPA was able to conduct an investigation, that finding is fully subsumed within the above. Consequently, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #3

5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

For the same reasons as above (see Named Employee #2 – Allegation #1), OPA was unable to reach findings in this matter. Consequently, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #4

5.001 - Standards and Duties 13. Retaliation is prohibited

For the same reasons as above (see Named Employee #2 – Allegation #1), OPA was unable to reach findings in this matter. Consequently, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #5

5.120-POL-2 Restrictions on Off-Duty Employment 1. The Department Prohibits Certain Employment

For the same reasons as above (see Named Employee #2 – Allegation #1), OPA was unable to reach findings in this matter. Consequently, OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**