



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 25, 2018

CASE NUMBER: 2017OPA-0958

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	15.370 - Sexual Assault Investigation 4. Officers Complete a GO Report and an Officer Statement	Not Sustained (Training Referral)
# 2	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Lawful and Proper)
# 3	15.370 - Sexual Assault Investigation 15.370-TSK-1 Patrol Officer Investigating a Sexual Assault Incident	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 5. Employees May Use Discretion	Not Sustained (Lawful and Proper)

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 Named Employee #1 failed to assist the Complainant when she told him that she had been raped at a nearby encampment. OPA further discovered that there was no General Offense Report completed concerning Named Employee #1’s contact with the Complainant, in potential violation of policy. During its investigation, OPA learned that Named Employee #1 refused to go into the Jungle – an unsanctioned encampment – to recover the Complainant’s personal property and that this decision was screened with and approved by his supervisor, Named Employee #2. As such, OPA alleged that the Named Employees’ decision-making in this regard may have been in abuse of their discretion under SPD Policy.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

15.370 - Sexual Assault Investigation 4. Officers Complete a GO Report and an Officer Statement

Named Employee #1 (NE#1) was contacted by the Complainant, who stated that she had been sexually assaulted. At the time he was approached, NE#1 was in his patrol vehicle in line at a coffee shop. The Complainant knocked on his window. She told NE#1 that she had been raped. NE#1 asked her if she needed medical attention and wanted to do a rape kit. The Complainant stated no, but indicated that she wanted her rapist prosecuted. NE#1 then told her that unless she had a rape kit done, it was unlikely that the case would be prosecuted. The Complainant then agreed to a rape kit, but asked NE#1 to first help her get her personal belongings. She indicated that the rape had occurred in



the Jungle, where she resided. She further intimated that the suspect was still in the Jungle in the vicinity of where her belongings were.

After she made this request, NE#1 called his supervisor, Named Employee #2 (NE#2) to screen this matter. NE#1 discussed the rape allegation and the request that he go with the subject into the Jungle to retrieve her belongings. At his OPA interview, NE#1 explained that he was nervous to go into the Jungle alone. He reported that normally teams of officers did so due to safety issues. NE#2 agreed with NE#1 that it was unsafe to go into the Jungle and that it was not warranted to retrieve personal belongings at that time. NE#2, like NE#1, recognized the safety risks of the Jungle and agreed with NE#1 that multiple officers were required to go into the Jungle.

NE#1 got off the phone with NE#2 and informed the Complainant that he was not going into the Jungle. NE#1 again asked the Complainant whether she wanted medical assistance and to complete a rape kit, and she said no. NE#1 asked if she wanted him to complete a report and she again said no. NE#1 asked if there was anything he could do for her and she said that she would take care of it herself and walked away. NE#1 never identified the Complainant. NE#1 did not ultimately complete a General Offense Report relating to this contact and the allegation of rape.

One day after the incident, the Complainant was arrested for stabbing an individual in the neck. She later identified this individual as her rapist. She was placed under arrest and informed a Sexual Assault Unit Detective that she had earlier reported the rape to an officer but that the officer had refused to write a report. Based on that allegation, the Detective initiated an OPA complaint. This investigation followed.

OPA identified NE#1 as being the officer who interacted with the Complainant and identified NE#2 as the supervisor who he screened this incident with. OPA interviewed both of the Named Employees in this case. OPA further attempted to interview the Complainant but were unable to do so.

SPD Policy 15.370-POL-4 requires officers to complete a General Offense Report and an officer statement when investigating a sexual assault. The policy sets forth what information need be memorialized in the General Offense Report. (SPD Policy 15.370-POL-4.) It also directs that the officer statement must be detailed. (*Id.*)

It is undisputed that NE#1 did not generate a General Offense Report as part of this incident. I presume that his rationale was that he did not do so based on the fact that he did not know the identity of the Complainant, but the record is unfortunately unclear on this point. NE#1 further stated to OPA that the Complainant indicated that she did not want him to generate a report, which may have been another reason why NE#1 did not ultimately complete the report.

I read the policy to require a General Offense Report in a sexual assault investigation and for an officer to make a detailed officer statement. NE#1 did neither. While the policy does not explicitly address scenarios in which the subject does not want a report or does not provide her identification, neither factor was, in and of itself, an impediment to NE#1 drafting the report anyway and listing the Complainant as a "jane doe" victim. That NE#2 stated at her second OPA interview that she regretted not verifying that NE#1 completed a report in this case lends credence to my interpretation. However, given that there is some ambiguity as to what was expected of NE#1 under the circumstances of this case and given that the subject walked away from NE#1 without providing her identification, I recommend that this allegation be Not Sustained – Training Referral.



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- **Training Referral:** NE#1 should receive additional training concerning the elements of this policy and, specifically, the requirement that, when investigating a sexual assault incident, he complete a General Offense Report and make a detailed officer statement. NE#1 should be instructed by his chain of command that his failure to do so in this case was inconsistent with policy and with the Department's expectations of his conduct. The Department takes sexual offense allegations incredibly seriously and NE#1 should have done everything he could have to make sure that the allegation in this case was documented. This re-training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 5. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-5, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-5.)

While I find that NE#1 did not act in accordance with best practices in this case, that conduct is addressed in the context of Allegations #1 and #3. This allegation was classified based on his decision to not enter the Jungle to recover the Complainant's personal property. On one hand, I sympathize with the Complainant, who was a rape victim and wanted to recover her personal property from an area from where that property could be taken if left unattended and was in a location near where the suspect was. However, I also understand NE#1's rationale for not wanting to go into the Jungle alone. That the Jungle is unsafe is well documented. Moreover, both NE#1 and NE#2 explained that officers did not go into the Jungle on their own and would only do so in teams. I further note that his ultimate decision to not enter the Jungle was endorsed by his supervisor.

Given these factors and given the safety risks presented by the Jungle, I cannot say that NE#1 abused his discretion when he declined to go inside to recover personal property. While I wish this case had resulted differently and that the officers had been able to give the subject the care she needed and deserved – particularly because a near fatal stabbing resulted the next day – I do not find that NE#1 abused his discretion in this instance. As such, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**

Named Employee #1 - Allegation #3

15.370 - Sexual Assault Investigation 15.370-TSK-1 Patrol Officer Investigating a Sexual Assault Incident

SPD Policy 15.370-TSK-1 sets forth the expectations for patrol officers who are investigating sexual assault incidents. The policy lays out 13 individual actions the officers are expected to take. (See SPD Policy 15.370-TSK-1.)

Notably, from my review of the record, NE#1 only took three of the 13 required actions. As with NE#1's failure to generate a General Offense Report and make an officer statement (which are two of the actions outlined in this section of the policy and are discussed above), NE#1's response to the Complainant's allegation of rape fell short of



what was expected of him under the policy. Again, NE#1's investigation of this incident was complicated by the fact that the Complainant ultimately walked away after he refused to get her personal belongings from the Jungle. However, NE#1 still did not engage in best practices in this case.

That being said, and as with Allegation #1, I believe that a training referral is the appropriate result.

- **Training Referral:** NE#1 should be re-trained on this policy and specifically the actions that he is required to take when investigating a sexual assault incident. NE#1 should be instructed that the failure to complete the vast majority of these actions in this case was unacceptable and was outside of policy and the Department's expectations. NE#1 should be counseled to abide by the requirements of this policy in the future. This re-training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #1

5.001 - Standards and Duties 5. Employees May Use Discretion

As indicated in SPD Policy 5.001-POL-5, "[e]mployees are authorized and expected to use discretion in a reasonable manner consistent with the mission of the department and duties of their office and assignment." This policy further states that "[t]he scope of discretion is proportional to the severity of the crime or public safety issue being addressed." (SPD Policy 5.001-POL-5.)

NE#2 stated at her first and second OPA interviews that she concurred with NE#1's inclination to not go into the Jungle by himself to recover the Complainant's personal property. NE#2 stated that it was not that she had no intent to go into the Jungle at all, she just simply did not think it was appropriate at that time for a solo officer to go to the Jungle to recover personal property. NE#2 stated that she believed the exigency of the circumstances were gone at that time given that the Complainant was already out of the Jungle and away from the suspect. NE#2's plan was to determine who the Complainant was, get details about the crime, and then complete a full investigation. In her own words, NE#2 intended to get the Complainant "taken care of, get her to the hospital, do a full investigation, get a team together, then go to the Jungle, figure out what we had."

NE#2 stated that this plan unfortunately did not work out when the subject declined to cooperate and walked away from NE#1. NE#2 did not regret her decision-making concerning not authorizing NE#1 to enter the Jungle as a solo officer. However, as discussed above, NE#2 did regret not verifying whether NE#1 wrote a report.

As indicated above, this allegation was classified based on NE#2's endorsement of NE#1's decision to not go into the Jungle to recover the Complainant's personal property. For the same reasons as discussed in the context of NE#1 (see Named Employee #1, Allegation #2), I do not believe that this decision consisted an abuse of the officers' discretion as law enforcement officers and that it did not violate policy. Accordingly, I recommend that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**