



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 20, 2018

CASE NUMBER: 2017OPA-1004

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)

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 Complainant alleged that the Named Employee allowed her to "grab his whole penis" for about 15 seconds. She said that after she did that she pulled her shirt down to expose her breast and the Named Employee cupped her exposed breast with his hand. She lastly alleged that the Named Employee touched her vagina.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant did not report the misconduct alleged in this case to anyone at SPD on the date of the incident or at any time thereafter. Instead, she notified a non-governmental service provider at the Aurora Commons of what had happened. That service provider initiated this complaint on the Complainant’s behalf.

According to the service provider, the Complainant alleged that Named Employee #1 (NE#1) touched her inappropriately during an undercover operation that resulted in her arrest. The Complainant admitted that, at the time, she was a sex worker and was “testing” NE#1 to determine if he was a police officer. She stated that when she asked NE#1 if he minded if she tested him, he said “no not at all” and put his hands in the air and thrust his pelvis out to suggest that she touch his penis. The Complainant said that she then grabbed NE#1’s “whole penis” with her hand and held his penis for approximately 15 seconds. She reported that she then pulled her shirt down to expose her breast and NE#1 said: “oh you have nice nipples.” She recalled that he then cupped her breast with his hand and then touched her vagina “for a couple of seconds.”

This complainant was passed on by the service provider to a Department Lieutenant, who then referred it to OPA. After reviewing this complaint, and based on the belief that the conduct alleged therein could potentially constitute criminal behavior on NE#1’s behalf, OPA referred this matter to SPD to conduct a criminal investigation. SPD did so and the assigned investigator interviewed an employee of the Aurora Commons, NE#1’s sergeant, and two other officers that worked on the undercover operation. The Aurora Commons employee did not have firsthand knowledge of the Complainant’s allegations and only learned about them generally at a meeting. All of the interviewed officers and the sergeant stated that this alleged conduct was never reported to them. Despite best



efforts, the criminal investigator was unable to interview the Complainant or the service provider. Based on the lack of information from the Complainant, the investigator found that the criminal offense could not be proved.

After this matter was returned to OPA, this investigation ensued. OPA attempted to contact both the Complainant and the service provider who initiated this matter. However, OPA was unsuccessful in this regard and was thus unable to interview either individual as part of this investigation. OPA did interview NE#1, as well as his sergeant.

The Sergeant affirmed to OPA that the Complainant never alleged any improper touching by NE#1 to him at any time during or after her arrest.

NE#1 told OPA that he was familiar with the rules of conduct for undercover officers and sex workers. He indicated that he understood that he could not initiate physical contact with a sex worker, but that he could “respond” to contact by the sex worker. NE#1 stated that “no sexual contact is allowed” and specified that he was referring to sexual “gratification.” He recalled that when he first spoke to the Complainant, she asked him what he “wanted.” He asked to have intercourse with her if she had “a place” and for oral sex if they were going to stay in the car. NE#1 recounted that the Complainant then reached over and put her hand on his groin area and kept it there for approximately one second. NE#1 said that this type of contact between a sex worker and an undercover officer was “very common.” NE#1 told OPA that the Complainant then took his hand and put it on her bare breast. He said that his hand remained on the Complainant’s breast for “one to two seconds tops.” NE#1 stated that he never touched the Complainant’s vagina. NE#1 recounted that he and the Complainant agreed on a fee for sexual acts and, shortly after that agreement was reached, she was placed under arrest. NE#1 stated that the Complainant did not make any allegations to him that he had inappropriately touched her. NE#1’s statement to OPA was consistent with what he wrote in his General Offense Report.

SPD Policy 5.001-POL-2 requires that SPD employees comply with laws, City policy, and Department policy. It further requires that employees comply with the SPD Manual, published directives and special orders, and Department training. Undercover Vice operations, such as the one conducted in this case by NE#1, are governed by the Street Prostitution Enforcement Protocol. Germane to this case, the protocols indicate that: “The UC [undercover officer] will not initiate any touching of the prostitute but may respond to the prostitute’s request to touch her to maintain his undercover status. The touching will be minimal and as least intrusive as possible.”

To the extent NE#1 engaged in the behavior detailed by the Complainant, he would have violated SPD policy and, potentially, criminal law. NE#1 denied doing so. Ultimately, due to the dispute of fact in this case and due to the fact that OPA was unable to interview either the Complainant or the service provider who initiated this complaint on her behalf, I cannot conclusively determine what occurred here. I note that, aside from the accounts of the involved parties, there is no video or audio recording that proves or disproves this incident. For these reasons, I recommend that this allegation be Not Sustained – Inconclusive.

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