



## CLOSED CASE SUMMARY

ISSUED DATE: MARCH 19, 2018

CASE NUMBER: 2017OPA-1008

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	7.010 - Submitting Evidence 1. Employees Secure Collected Evidence	Sustained
# 2	8.400-TSK-13 Use of Force - RESPONSIBILITIES OF THE FIT CASE DETECTIVE DURING A TYPE III INVESTIGATION (FIREARMS DISCHARGE)	Not Sustained (Management Action)
# 3	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (FIT MANUAL)	Not Sustained (Management Action)
# 4	5.001 - Standards and Duties 4. Employees Complete Work in a Timely Manner	Allegation Removed

**Imposed Discipline**

Written Reprimand
-------------------

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (FIT MANUAL)	Not Sustained (Management Action)
# 2	8.400-TSK-15 Use of Force - RESPONSIBILITIES OF THE FIT UNIT SERGEANT DURING A TYPE III INVESTIGATION (FIREARMS DISCHARGE)	Not Sustained (Management Action)

***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, the former Captain of SPD’s Force Investigation Team, alleged that Named Employee #1 improperly stored evidence in his personal locker for an extended period of time, and that Named Employee #2 failed to properly supervise him and monitor his failure to timely submit the evidence.

**ADMINISTRATIVE NOTE:**

This case was initiated around the same time of another case where it was alleged that a Detective kept a firearm used in a fatal officer-involved shooting in a locked desk drawer in his office and did not timely submit that firearm into evidence. In that similar case, which was investigated under 2017OPA-0980, the allegation under SPD Policy 7.010-POL-1 was sustained against the Detective who improperly stored the evidence. The remainder of the allegations were not sustained, many due to the lack of clarity and specificity of SPD policies and the FIT Manual. As a result of that



---

case, OPA issued several Management Action Recommendations. These Management Action Recommendations are referenced, and in some respects supplemented, below.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegation #1**

***7.010 - Submitting Evidence 1. Employees Secure Collected Evidence***

This case was initiated by the Complainant who is former Captain of the Department's Force Investigation Team (FIT). The Complainant alleged that, based on information he learned, Named Employee #1 (NE#1) had stored in his personal office for 19 days a firearm that had been used in an officer-involved shooting. The Complainant conferred with Named Employee #2 (NE#2), who is the present FIT Sergeant. According to the Complainant, NE#2 stated that he was unaware that the firearm was stored in NE#1's personal office instead of in the Evidence Unit. As discussed above, this referral was made around the same time as another referral for a similar failure to timely secure a firearm into evidence. In that similar case, the involved FIT Detective stored the firearm in his personal office for 53 days.

At his OPA interview, NE#1 recounted that he was assigned to be the lead FIT Detective on an officer-involved shooting. It was his first such assignment. He stated that he took custody of the involved officer's firearm after the shooting. NE#1 reported that he took photographs of the weapon, conducted a round count, and then packaged the weapon in anticipation of placing it into evidence. NE#1 said that, at that time, he was informed by another FIT Detective of FIT's evidence locker. However, he stated that he understood that the key to the evidence locker was maintained in an unlocked cabinet on the desk of an Administrative Assistant and, thus, "anyone" could gain access to the evidence locker (in reality, only the limited few with access to FIT's offices could have opened the evidence locker). Based on this articulated concern, NE#1 made the decision to place the firearm in his office for safekeeping until he could bring it to SPD's Evidence Unit. However, as discussed below, he did not do so until 19 days later.

NE#1 told OPA that he did not raise his storage of the firearm with NE#2 or with the Complainant prior to making the decision to do so in his personal office. He said that he tried to meet with the Complainant multiple times but was unable to because of scheduling conflicts. NE#1 did not recall either NE#2 or the Complainant asking him where the firearm was during the 19 days that it was in his personal office. NE#1 noted that he had not stored evidence in his personal office before this case and has not done so since.

NE#1 asserted his belief that the locker in his personal office was an authorized evidence storage location. It was unclear, however, what he based this belief on. This was particularly the case given that he confirmed at his OPA interview that he never received authorization from his chain of command (including NE#2 and the Complainant) to do so. He further stated that he did not believe that his chain of command was aware that he stored the firearm in his personal office in this case until after the fact.

NE#1 stated that he had received no training concerning evidence since joining FIT and that he had no orientation when he joined FIT on how the unit handled evidence. However, OPA obtained a Training Attendance Roster that indicated that NE#1 attended a training on October 18, 2016, entitled "DOJ – Mandated Evidence Class for FIT." NE#1 further stated that no one told him to read the FIT Manual and that he was not given a copy of it when he



---

joined FIT. He said that he found it, at one point, while perusing a unit shared drive and that he looked at the manual then.

Ultimately, NE#1 left the firearm in the locker in his personal office for 19 days prior to submitting it into evidence. He told OPA that he believed that this conduct conformed to best practices in evidence handling and contended that he maintained the chain of custody of the firearm.

At his OPA interview, NE#2 stated that it was commonplace in the FIT Unit to use personal offices to *temporarily* store evidence, but that the expectation was that the evidence would be taken to the Evidence Unit shortly thereafter. NE#2 noted that the FIT office, itself, was secure and that only FIT members had access to that space. NE#2 stated that he believed that the lockable locker in NE#1's office was more secure than the FIT evidence locker in the common area. NE#2 contended that while office storage was only supposed to be temporary, there was no definition in policy as to what temporary meant. He further contended that an authorized evidence storage unit was also not defined in policy. Lastly, NE#2 told OPA that FIT's command staff had been aware, since the inception of the unit, of the Detectives' practice of storing evidence in personal offices, including firearms. Indeed, NE#2 provided OPA a list of a number of other cases in which this conduct had allegedly occurred. However, NE#2 stated that FIT's command staff had taken no action until the complaints concerning this and the other similar case were submitted to OPA.

NE#2 told OPA that prior to this incident and the other similar case, there was no requirement that he confirm with Detectives concerning the location of a firearm used in an officer-involved shooting. Since that time, changes have been made to FIT practices to require periodic check-ins concerning this issue.

SPD Policy 7.010-POL-1 requires that employees secure collected evidence. It further instructs employees that they must place that evidence into the Evidence Unit or an authorized evidence storage area before they end their shift.

It may very well be that it was the "past practice" of Detectives in the FIT unit to temporarily store evidence, including firearms, in their personal offices. It may also be the case that FIT supervisors were aware of this ongoing conduct. However, maintaining a firearm in a Detective's personal office for 19 days does not constitute the temporary storage of evidence and, based on my understanding and on discussions with OPA staff and the Named Employees' chain of command (including the Deputy Chief of Police and the Assistant Chief for the Compliance Bureau), does not and cannot constitute best practices for evidence collection.

As discussed in the similar case previously investigated by OPA, a personal locker could have had contaminants therein, had no tracking or bar code system to ensure chain of custody, and was simply not a permissible and authorized evidence storage location. Moreover, simply because the prohibition on storing evidence in one's personal office is not explicitly set forth in policy does not change this logical determination. As I previously found, it is simply implausible to me that any Detective, let alone a Detective with the level of expertise and specialized training as those assigned to FIT, would have believed it permissible to store a firearm that was used in an officer-involved shooting in a personal office locker. While here, as in the other similar case, OPA's investigation indicated that no forensic harm had come from the storage of the firearms in NE#1's personal office, such harm easily could have occurred. If this had happened, it could have greatly undermined the legitimacy and public trust and confidence in the Department's investigation into a matter of significant public concern. Even if this did not ultimately result from NE#1's conduct, that he put the FIT investigation at such risk is unacceptable. Moreover, not



---

only did this error have the potential to negatively impact FIT's investigation, it also ran the risk of tainting later possible criminal, civil, and administrative proceedings. That there was no ill-effect to the evidence in this case was extremely fortunate.

Lastly, I do not find that NE#1's conduct was motivated by bad faith and I have no doubt that NE#1 will not engage in such conduct in the future. That being said, given the egregious nature of this incident and the length that the firearm was kept in NE#1's personal office, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**

**Named Employee #1 - Allegation #2**

***8.400-TSK-13 Use of Force - RESPONSIBILITIES OF THE FIT CASE DETECTIVE DURING A TYPE III INVESTIGATION (FIREARMS DISCHARGE)***

SPD Policy 8.400-TSK-13 governs the responsibilities of the FIT case detective during an investigation into a Type III use of force. Specifically, SPD Policy 8.400-TSK-13(7) requires that the case detective "confirms [that] the involved officer's firearm is placed into Evidence."

In the prior OPA case concerning similar conduct, I concluded, applying a preponderance of the evidence standard, that the expectation and practice of FIT was that the vast majority of evidence – and particularly firearms and forensic evidence – would be placed in the Evidence Unit as soon as possible. For practical reasons and based on the nature of the fast-paced and hectic work of a FIT Detective, there were times that firearms and forensic evidence were maintained in personal offices, but I found that this was the exception rather than the rule, and that this case and the other case that was investigated by OPA were outliers.

For these reasons, I find that NE#1 also violated this policy. However, as I already recommend that Allegation #1 be sustained, I deem it unnecessary to also sustain this allegation. Instead, I refer to and include below the Management Action Recommendation made in 2017OPA-0980.

- **Management Action Recommendation:** The Department should modify SPD Policy 7.010-POL-1 to define what an authorized evidence storage location is. The policy should make clear that desk drawers or lockers in personal offices are not such authorized locations. The FIT unit should also modify its manual to make clear the expectation that officers will, as soon as feasible, take case evidence to the Evidence Unit. It should clearly indicate what, if any, other authorized evidence storage locations exist in the FIT unit, as well as that evidence should never be stored in personal offices. Lastly, the FIT unit should amend its manual to provide more detail on its expectations for evidence handling and provide additional training for its Detectives and supervisors in this area.

Recommended Finding: **Not Sustained (Management Action)**



---

**Named Employee #1 - Allegation #3**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (FIT MANUAL)***

SPD Policy 5.001-POL-2 requires that SPD employees adhere to laws, City policy and Department Policy. While the policy instructs officers that they must act in compliance with the SPD Manual, published directives and special orders, and Department training, it does not specifically state that non-compliance with a unit manual, such as the FIT Manual, constitutes a violation of SPD Policy. As such, even though I believe that NE#1 failed to act in compliance with the FIT Manual in this instance, this policy does not cover that failure and, even if it did, the sustained finding above already captures the misconduct in question.

In the prior similar OPA case, I made a Management Action Recommendation requesting that the Department clarify this policy to ensure that it captured non-compliance with unit manuals and, specifically, the FIT Manual. I issue that same Management Action Recommendation here.

- **Management Action Recommendation:** SPD Policy 5.001-POL-2 should be modified to include unit manuals as one of the types of regulations that officers are responsible for adhering to. The policy should be amended to make clear that failure to comply with unit manuals – specifically, for units such as FIT, which are crucial to SPD’s ability to carry out law enforcement prerogatives, maintain community trust and provide internal accountability – constitutes a violation of both policy and the Department’s expectations.

Recommended Finding: **Not Sustained (Management Action)**

**Named Employee #1 - Allegation #4**

***5.001 - Standards and Duties 5. Employees Complete Work in a Timely Manner***

SPD Policy 5.001-POL-5 states that: “Absent exigent circumstances or supervisory approval, employees will complete all required duties and official reports before going off duty.”

The conduct captured by this policy – the failure to timely enter the firearms into evidence – is already captured by the Sustained finding in Allegation #1. As such, this allegation is duplicative and unnecessary and I recommend that it be removed.

Recommended Finding: **Allegation Removed**

**Named Employee #2 - Allegation #1**

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy (FIT MANUAL)***

I refer to the Management Action Recommendation set forth above. (See Named Employee #1, Allegation #3.)

Recommended Finding: **Not Sustained (Management Action)**



---

**Named Employee #2 - Allegation #2**

**8.400-TSK-15 Use of Force - RESPONSIBILITIES OF THE FIT UNIT SERGEANT DURING A TYPE III INVESTIGATION (FIREARMS DISCHARGE)**

SPD Policy 8.400-TSK-15 governs the responsibilities of the FIT sergeant during a Type III use of force investigation. It sets forth six tasks assigned to the FIT sergeant, including that the sergeant “[o]versees the FIT investigation, per the FIT Manual.” The FIT Manual, in turn, itemizes how the sergeant is to oversee the investigation. The FIT Manual does not indicate any specific responsibility of the sergeant to oversee the placement of items into evidence by the detectives.

This is the second of two cases involving firearms left in a personal office by a FIT Detective for an extended amount of time. In the prior case, this allegation was also classified against NE#2. I recommended that it be Not Sustained – Inconclusive. For the same reasons as articulated in that case, I also recommend that this allegation be Not Sustained here.

At the discipline meeting in that prior case, NE#2’s chain of command indicated their belief that his conduct was certainly below expectations, but recognized that he was overworked and had a tremendous amount of responsibility. There was also agreement that the FIT Manual was not particularly clear concerning the requirements for FIT Sergeants to actively monitor the investigations conducted by Detectives and to ensure that evidence is timely placed into evidence. Moreover, as discussed above, I note that FIT has since changed its practices to make it mandatory that FIT Sergeants conduct periodic check-ins with Detectives concerning the status of evidence. For these reasons, I make the following Management Action Recommendation.

- **Management Action Recommendation:** The FIT Manual should be modified to more clearly define the expectations for the FIT Sergeant. For example, the newly established requirement that the FIT Sergeant check-in with Detectives to determine the location and status of evidence and firearms should be memorialized in the Manual. The FIT Manual should put FIT Sergeants on notice that, based on this new requirement, if behavior like that which occurred in this case happens again, it may result in a sustained finding. Lastly, while somewhat unrelated, I recommend that FIT reevaluate its current practice of taking possession and maintaining custody of handguns. Notably, when the firearm at issue is a long gun (rifle or shotgun), FIT does not take custody of the weapon and, instead, it is processed by CSI. It is unclear to me why the same practice is not applied to handguns. I believe that this would constitute best practices and would result in consistent treatment of and processing standards for all firearms, regardless of type.

Recommended Finding: **Not Sustained (Management Action)**