



CLOSED CASE SUMMARY

ISSUED DATE: MAY 3, 2018

CASE NUMBER: 2017OPA-1206

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Sustained
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Sustained

Imposed Discipline

Retired in lieu of termination

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 Department EEO Sergeant (now a Lieutenant) alleged that the Named Employee may have violated Department policy by engaging in dishonesty. OPA further classified for investigation the allegation that the Named Employee’s conduct may have violated the law.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

The facts of this case are set forth more fully in the Case Summaries for both this investigation and for a prior OPA investigation (*see Case Summary, 2016OPA-1016; see also Case Summary, 2017OPA-1206*), the EEO investigation conducted by the Department (*see EEO Investigation Outcome*), and the criminal investigation into Named Employee #1’s (NE#1) actions and the resulting prosecution. However, by way of background, in August 2016, four SPD employees came forward and alleged that NE#1 had “engaged in unconsented or unwelcomed physical and sexual touching, made inappropriate sexual comments, made inappropriate comments about sexual orientation, made inappropriate racial comments, engaged in intimidating conduct, abused his position, and bypassed security measures.” (*EEO Investigation Outcome, at p. 1.*)

These allegations were investigated by the Department’s Sexual Assault Unit and were subsequently referred to the King County Prosecuting Attorney’s Office (KCPAO). In October 2016, the KCPAO filed charges that NE#1 had “assaulted three of the complainant employees...in the fourth degree. Two of the counts were charged with the aggravating factor that [NE#1] committed the crimes with sexual motivation.” (*Id.*)

In October 2017, NE#1 “pled guilty to one count of assault in the fourth degree naming all victims in one count.” (*Id.*) Moreover, during his plea colloquy, NE#1 admitted touching all three of the employee complainants “in an offensive manner and [that] the touching was unwanted.” (*Id.* at pp. 1-2; *see also Statement of Defendant upon a Plea of*



Guilty.) During his plea colloquy, NE#1 “told the court he understood these actions were unlawful.” (EEO Investigation outcome, at p. 2.) NE#1 was sentenced in November 2017 and received 12 months of suspended jail time and 12 months of probation. (*Id.*)

After NE#1’s plea was entered, the Department conducted an EEO investigation into this matter. (*See id.*) The EEO investigation was extremely thorough and included interviews of thirty-six victims and witnesses, some of whom were interviewed multiple times. (*See id.*) NE#1 was interviewed by the EEO investigator. During that interview, NE#1 stated that the statements made during his plea colloquy were untrue. (*See NE#1 EEO Interview, at pp. 32-34.*) He denied engaging in the misconduct that he had pleaded guilty to. (*See id.*)

The EEO investigation resulted in a 126-page report that clearly and comprehensively set forth the inappropriate conduct engaged in by NE#1. (*See id.*) The conclusions of the EEO investigation were signed off by the chain of command and the recommendation of the chain was that NE#1 should be terminated. (*See EEO Investigation Supervisory Review and Approval.*) This recommendation was made by the chain in January 2018, after NE#1 had already resigned from the Department. (*See id.*)

After the EEO and criminal proceedings were completed, OPA conducted and finalized its investigation into the misconduct alleged against NE#1. This investigation was under case number 2016OPA-1016. OPA reviewed the documentation amassed in both the EEO and criminal investigations. (*See Case Summary, 2016OPA-1016.*) OPA attempted to interview NE#1 and tried to contact him on multiple occasions in order to set up an interview. (*See id.*) NE#1 did not respond to OPA and was thus not interviewed as part of that investigation. (*See id.*) OPA ultimately recommended that the following allegations be sustained against NE#1: (1) SPD Policy 5.001-POL-2 – violation of law, City policy, and/or Department policy; (2) SPD Policy 5.001-POL-9 - professionalism; and (3) SPD Policy 5.001-POL-12 – using position or authority for personal gain. (*See Director’s Certification Memo, 2016OPA-1016.*)

On November 20, 2017, the Department’s EEO Sergeant at the time referred to OPA an allegation of whether NE#1 engaged in dishonesty either during his EEO interview or during his plea colloquy. (Email from EEO Sergeant to OPA.) The EEO Sergeant wrote that the complaint was based on NE#1’s statement “that the plea agreement that he signed, presented to the court, and read in open court was not factual.” (*Id.*) The EEO sergeant further wrote that: “This raises, at a minimum, questions about whether he violated the Department’s honesty policy.” (*Id.*)

OPA also tried to interview NE#1 in this case; however, as with 2016OPA-1016, NE#1 did not respond to OPA. (*See Case Summary, 2017OPA-1206.*) Accordingly, OPA was unable to interview NE#1 with regard to the allegations discussed herein.

SPD Policy 5.001-POL-10 requires that Department employees be truthful and complete in all communications. Based on NE#1’s own statements to EEO, he was dishonest. Either he lied to the Court during his plea colloquy or he lied to the EEO investigator during his interview when he denied engaging in the conduct that he pleaded guilty to. I find that the evidence in the record more than meets the clear and convincing standard required to prove dishonesty.

For these reasons, I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**



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 Department employees adhere to laws, City policy, and Department policy. As discussed above, I find that NE#1 engaged in dishonesty, in clear violation of Department policy. Moreover, if, as NE#1's EEO interview indicates, he was untruthful to either the Court during his plea colloquy or the EEO investigator during the Department's EEO investigation, this would also have been in violation of law. Specifically, such conduct would have violated, at the very least, RCW 9A.76.175, which states:

A person who knowingly makes a false or misleading material statement to a public servant is guilty of a gross misdemeanor. 'Material statement' means a written or oral statement reasonably likely to be relied upon by a public servant in the discharge of his or her official powers or duties.

One way or the other, NE#1 made a knowingly false or misleading statement to a public official – here, either to the Court or to the EEO investigator. Moreover, the statement was material, in that it was an oral statement that was, in fact, relied upon by both the Court and the EEO investigator in the discharge of their official powers or duties. For these reasons, NE#1 violated the law in this regard and I recommend that this allegation be Sustained.

Recommended Finding: **Sustained**