



## **CLOSED CASE SUMMARY**

ISSUED DATE:      SEPTEMBER 4, 2018

CASE NUMBER:     2018OPA-0220

### **Allegations of Misconduct & Director’s Findings**

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.001 - Standards and Duties 18. Employees Must Avoid Conflicts of Interest	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Unfounded)

***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 engaged in a conflict of interest and did not disclose that conflict. The Complainant further alleged that, in doing so, the Named Employee engaged in unprofessional behavior.

### **STATEMENT OF FACTS:**

In addition to the allegations set forth below, the Complainant asserted that NE#1 engaged in “negligence” when she failed to interview several officers “that deployed blast ball grenades.” The Complainant reasoned that when she did so she violated the law, thus violating SPD Policy 5.001-POL-2. While a creative argument, OPA declines to read this policy as broadly as the Complainant suggests. OPA does not believe that the Department intended that this policy would capture a “negligent investigation” allegation and declines to interpret the policy as doing so. As such, OPA, with the OPA Auditor’s approval, declined to investigate this aspect of the Complainant’s complaint.

### **ANALYSIS AND CONCLUSIONS:**

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

#### ***5.001 - Standards and Duties 18. Employees Must Avoid Conflicts of Interest***

SPD Policy 5.001-POL-18 requires that Department employees avoid conflicts of interest. The policy instructs that: “Employees will not engage in enforcement, investigative, or administrative functions that create or give the appearance of conflicts of interest.” The policy further compels that: “Employees will not investigate events where they are involved. This also applies where any person with whom the employee has a personal relationship is involved in the event.”

The Complainant alleged that NE#1, who was assigned to OPA as an investigator at the time, engaged in a conflict of interest in two respects. First, he contended that she had a pre-existing romantic relationship with an Officer. The



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Complainant based this on a news article in *The Stranger*, which detailed various administrative investigations against that Officer and one lawsuit. The article referenced NE#1 and, citing “the City,” identified her as the Officer’s “then-undisclosed [at the time of the incident underlying the lawsuit] girlfriend.” The Complainant contended that NE#1’s past relationship “should have been disclosed to senior SPD/OPA personnel” and asserted, without any evidence, that the relationship “does not appear to have been disclosed.”

The Complainant further asserted his belief, again without any supporting evidence, that NE#1 failed to investigate the Officer’s use of blast balls during May Day 2015 because of this relationship. He further contended that NE#1 “seem[ed] to work to shield [the Officer] by keeping him out of the investigation.” He alleged that NE#1 “failed to conduct interviews with [the Officer] and perhaps others because of her personal relationships with them or desire to work closely with them after she left OPA.” Lastly, the Complainant asserted his belief that NE#1 did not interview a Sergeant “because she wanted to shield him from disciplinary action and potential liability.”

As part of its investigation, OPA conducted two interviews of NE#1. During her first interview, NE#1 explained that she was assigned to investigate 2015OPA-0643 by her then Lieutenant. She told OPA that she did not request this assignment and, as far as she knew, she received it randomly.

She did not believe that she had a conflict of interest that precluded her from investigated this case. She stated that, had she felt that a conflict existed, she would have reported it to her supervisor. NE#1 explained that there were approximately 30 to 40 officers who were possible witnesses in the case. She did not believe that a relationship with one or more of those witnesses precluded her from investigating that matter. NE#1 specifically stated that she did not have a personal relationship with the Sergeant that she believed needed to be disclosed as a conflict.

NE#1 explained that the decision concerning who would be interviewed in the case was made by both her and by her chain of command. She further stated that the completed investigation was reviewed approved by her chain of command and OPA’s civilian leadership. Lastly, she stated that the investigation was certified by the OPA Auditor prior to the OPA Director issuing recommended findings.

OPA conducted a second interview of NE#1 during which she was specifically asked about her prior personal relationship with the Officer. She stated that she did have a prior relationship with the Officer that ended in approximately 2010. She explained that OPA sworn supervisors knew of this relationship because she had previously been assigned a case where the Officer was the named employee and she reported the relationship. She was then removed from that case and it was reassigned to another investigator.

NE#1 explained to OPA that the Officer was not the target of the investigation. She stated that he was only an officer involved in the demonstration that had used force and generated a use of force report. She reported that her “mission was to see if [she] could identify [the Sergeant] as being the person that threw the blast ball at [the Complainant], because that’s who [the Complainant] insisted threw the blast ball at him.”

NE#1 stated that she did not perform the intake in that matter and was assigned the case after the intake was completed. As such, she asserted that she did not decide which named employees or allegations were to be investigated. She contended that there was no evidence to link the Officer’s blast ball deployment to the potential misconduct alleged by the Complainant. She lastly stated that, had there been such a link, she would have then informed her supervisor of the possible conflict.



From my review of the record, there is insufficient evidence to prove that NE#1 violated this policy.

First, while NE#1 acknowledged that she had a prior relationship with the Officer and recognized that it would have been a conflict to investigate a case in which the Officer was the subject, she stated that he was not the subject of her investigation. I agree. Based on guidance from her supervisors, NE#1 conducted a targeted investigation to identify who threw the blast ball that the Complainant alleged injured him. The Complainant believed this to be the Sergeant not the Officer. The Officer did use force in the form of a blast ball on that date, but there was no evidence connecting that blast ball to the Complainant's injuries or, as far as I am aware, to the injuries of any other demonstrator. At most, the Officer was an uninvolved witness and, given this, there was no conflict of interest that precluded NE#1 from investigating the incident.

Second, NE#1 asserted that she did, in fact, disclose her prior relationship with the Officer to her direct supervisor at OPA. As such, she complied with the disclosure requirement of this policy. While the Complainant believes the contrary, there is no evidence contradicting NE#1's testimony.

Third, there is no evidence supporting the Complainant's theory that NE#1 purposefully shielded either the Officer or the Sergeant for personal reasons or because she knew that she would possibly work with them again after she left OPA. Notably, NE#1 did not work with either officer once she left OPA and began her new assignment.

Fourth, and last, had such a conflict existed or had the OPA investigation been tainted, I firmly believe that the OPA Auditor, then retired Judge Anne Levinson, would have identified these issues. She did not and, instead, certified the investigation as thorough, objective, and timely. I place significant weight on this evidence.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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

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

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

This allegation was classified for investigation based on the possibility that, if NE#1 did not disclose an actual conflict of interest prior to conducting her investigation, she would have also engaged in unprofessional behavior.

As discussed above, I do not find that NE#1 had a conflict of interest as contemplated by this policy. Moreover, I find that she did disclose her prior relationship with the officer to her supervisors. Given that I find that she did not violate SPD Policy 5.001-POL-18, I similarly find that she did not engage in unprofessional behavior.

Accordingly, I recommend that this allegation be Not Sustained – Unfounded.

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