



## **CLOSED CASE SUMMARY**

ISSUED DATE: NOVEMBER 20, 2018

CASE NUMBER: 2018OPA-0343

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

**Named Employee #1**

<b>Allegation(s):</b>		<b>Director’s Findings</b>
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 8. Employees Will Report Certain Events	Not Sustained (Lawful and Proper)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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:**

It was alleged that the Named Employee may have engaged in criminal activity and that he failed to report possible child abuse. It was further alleged that the Named Employee may not have self-reported as required by this policy. Lastly, it was alleged that the Named Employee’s behavior was unprofessional.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegations #1**

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

The Complainant alleged that Named Employee #1 (NE#1) engaged in various criminal behavior towards her. The Complainant, who was NE#1’s ex-partner, contended that he assaulted her on one occasion, forced her to engage in sexual activity, and threatened her with his firearm. This matter was investigated criminally but the prosecutor declined to file charges.

The Complainant also filed a complaint with OPA. In that complaint, the Complainant set forth the same allegations as she made to the criminal investigator. She further played for OPA recordings that she had made of conversations between her and NE#1. However, these recordings did not capture any threats made by NE#1 towards the Complainant or threats he made to harm himself. Moreover, the Complainant’s medical records, which were reviewed by OPA, did not contain any information substantiating the allegation of an injury to her breast.

NE#1 told OPA that he never engaged in non-consensual sex with the Complainant. He further denied threatening her with a firearm. Lastly, he indicated that he did not cause an injury to her breast. NE#1 provided text messages and call logs to OPA that he contended showed when he learned about the injury to the Complainant’s breast. Those text messages indicated that he encouraged her to seek medical treatment.



Lastly, NE#1 contended that he did not act contrary to law when he failed to notify the relevant authorities of the Complainant's alleged abuse of their son. He explained to OPA that, based on his prior experience in Pierce County, he did not believe that the allegations rose to the level of criminal child abuse. He further stated that he conferred with a Department Captain concerning this matter who concurred that the allegations were not criminal in nature.

SPD Policy 5.002-POL-2 requires that employees adhere to laws, City policy, and Department policy.

With regard to the secondary allegation that NE#1 failed to report the alleged child abuse of his and the Complainant's son, the evidence in the record suggests that the conduct did not rise to the level of criminal activity that he was required to report. Significant to this determination is the fact that a Department Captain was notified of this matter and concurred with this conclusion.

However, with regard to the primary allegation of criminal conduct engaged in by NE#1, the record is insufficient to prove or disprove whether he engaged in this activity. There are no witnesses to these alleged criminal acts and the video presented by the Complainant does not provide conclusive evidence one way or the other. I further note, as recognized by the prosecutor, that the Complainant did not come forward with her allegation of abuse by NE#1 until "after she saw a letter from [NE#1's] family law attorney." While this does not necessarily yield her allegations unreliable, it certainly raises questions in this regard.

Ultimately, based on the facts in the record and when applying a preponderance of the evidence standard, OPA cannot determine whether or not NE#1 engaged in conduct that was contrary to this policy. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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

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

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 8. Employees Will Report Certain Events***

SPD Policy 5.002-POL-8 requires employees to report when they are the subject of an order of protection. The reporting must occur as soon as practical. (SPD Policy 5.002-POL-8.)

Based on OPA's review of the evidence, it appears that NE#1 did properly self-report on his first day back to work after being served with the order of protection. I find that this was consistent with Department policy. 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**

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

SPD Policy 5.001-POL-9 requires that SPD employees "strive to be professional at all times." The policy further instructs that "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." (SPD Policy 5.001-POL-9.) The policy further states the following: "Any time employees represent



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the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*)

If NE#1 engaged in the behavior alleged by the Complaint, it would have constituted unprofessional conduct under SPD policy. However, for the same reasons as stated above, I cannot conclusively prove or disprove whether he did so. Accordingly, I recommend that this allegation be Not Sustained – Inconclusive.

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