



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 27, 2018

CASE NUMBER: 2018OPA-0490

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 14. Retaliation is prohibited	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 retaliated against the Complainant when he filed an OPA complaint against her.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 14. Retaliation is prohibited

It was alleged that Named Employee #1 (NE#1) retaliated against the Complainant when he filed an OPA complaint against her. This matter arose out of an incident that occurred on January 30, 2018. This incident, which was investigated under OPA case number 2018OPA-0118, concerned a search that was effectuated of a vacant building. NE#1 was one of the officers involved in the search, while the Complainant was the officers’ supervisor. The Complainant, who was monitoring the officers’ actions over radio, asked for the officers to call or otherwise contact her prior to effectuating the search. The officers did not do so, with two intentionally failing to contact her and making statements dismissive of the Complainant that were captured by Body Worn Video (BWV). All of the involved officers, including NE#1, were investigated under 2018OPA-0118. NE#1 did not receive a Sustained finding, but two other officers in NE#1’s squad did for violations of the Department’s professionalism policy.

The date after the incident, on January 31, 2018, NE#1 and another officer confronted the Complainant about what they perceived to be her unprofessional behavior when she came to the scene. The Complainant stated that NE#1 told her that he was going to file a “grievance” against her for “conduct unbecoming.” She recalled that the involved officers were particularly incensed by what they perceived to be the Complainant’s unprofessional behavior when she “yelled” at officers at the scene and while in the presence of community members.

The Complainant filed an OPA complaint on February 2, 2018. On February 6, 2018, NE#1 and other officers received emailed notice of the complaint. All of the named officers received the classification notice informing them that they were the subjects of an OPA investigation on February 27, 2017. This notice also set forth the allegations that were being investigated by OPA.



On March 12, 2018, NE#1 filed an OPA complaint against the Complainant alleging that she had engaged in unprofessional behavior. In the emailed complaint, he concluded with the following statement: “[The Complainant’s] remarkably inaccurate analysis of the situation and refusal to admit any wrongdoing indicates incompetence and egotism that is not reconcilable with our oaths.”

During a conversation concerning another related case, the Complainant indicated her belief that this emailed complaint from NE#1 constituted retaliation. Specifically, the Complainant contended that the conduct was retaliatory because NE#1 indicated that he was intending on filing a “grievance” against her, but that he did not take any action until receiving the five-day and 30-day notices informing him that he and other officers were the subjects of an OPA investigation. OPA accordingly initiated an intake and this investigation followed.

As part of its investigation, OPA interviewed NE#1. He described that, the day after the incident, he and another officer told the Complainant in “no uncertain terms” that her conduct had been unprofessional. He further recounted telling her that her behavior was “reprehensible,” that she owed two other officers an apology, and “that [he] would be filing a complaint regarding the incident.” NE#1 told OPA that he did not recall the specific language he used to describe the “complaint.” Notably, NE#1 provided similar information during his interview in 2018OPA-0118, when he stated that he informed the Complainant that he was going to file a “complaint” against her as a result of the incident.

At his interview, OPA asked NE#1 why he waited until March 12 to make the complaint. NE#1 stated that he was: “unsure exactly how [he] should file that complaint, if [he] should address it through OPA or EEO or just through the Chain of Command. The Chain of Command was also – investigating and doing things at the precinct involving this call.” NE#1 further indicated that he “waited for a while to see how that would progress...and to decide what the best way to deal with it...would be.” NE#1 told OPA that he ultimately decided to initiate an OPA complaint “because at the time, [the] Chain of Command had done everything that [he] felt that they were going to do.” He further told OPA that: “EEO didn’t seem appropriate because I didn’t think that it involved any sort of protected class situation, it was just...a manual policy violation.” NE#1 ultimately denied that he violated the Department’s retaliation policy when he filed an OPA complaint against the Complainant.

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy_” or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

This is not the first time that NE#1 has been investigated for allegedly using OPA to retaliate against another Department employee. In the prior case involving similar conduct, OPA recommended that a retaliation allegation be Sustained against NE#1 but, after the discipline meeting, changed the finding to a Training Referral. As part of that Training Referral, NE#1 spent four hours at OPA learning how and why our office investigates complaints. However, it does not appear that this training was impactful for NE#1.

Here, however, the evidence is insufficient to establish that NE#1 engaged in retaliation. Two main factors inform this decision. First, without opining as to whether it was appropriate for him to do so, NE#1 told the Complainant that he was going to file a complaint against her the day after the initial incident. As such, prior to receiving the



contractual notices concerning the complaint against him and his fellow officers, he had already indicated his intent to take this action. Second, even though NE#1 has shown, at best, a consistent lack of understanding of OPA's processes and, at worst, a penchant for using OPA as a mechanism to get back at people that he feels have wronged him, I do not want to chill, by issuing a Sustained finding here, the use of OPA by officers to address legitimate potential policy violations.

For the above reasons, and when applying a preponderance of the evidence standard, I recommend that this allegation be Not Sustained – Inconclusive.

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