



## **CLOSED CASE SUMMARY**

ISSUED DATE: AUGUST 17, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2019OPA-0687

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

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)
# 2	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 11. Employees Will Cooperate with Department Internal Investigations	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 possessed child pornography and other photographs that may have been taken illegally. It was further alleged that this conduct, as well as other behavior engaged in by the Named Employee was unprofessional. Lastly, it was alleged that the Named Employee may have destroyed evidence while this investigation was pending.

### **SUMMARY OF INVESTIGATION:**

OPA was referred a complaint from the chain of command. A male – who is the Complainant in this case – alleged that his ex-girlfriend and friend, who is referred to here as the Subject, reported that Named Employee #1 (NE#1) was in possession of possible child pornography. The male identified that the Subject is the long time on/off girlfriend of NE#1. The male informed SPD that the Complainant found pictures of: her daughter, from when her daughter was a minor; her daughter’s worn underwear; partially nude and clothed minor girls; and women who apparently live in the building. The male said that the Complainant was scared. He did not know whether she had reported this conduct. Around this same time, the building manager received an anonymous note that stated that NE#1 was taking photographs of her and other women in the building. The building manager contacted SPD to report this. This matter was also forwarded to OPA.

Based on the nature of the allegations – specifically, the report that NE#1 possessed child pornography – OPA referred this matter back to SPD for criminal investigation. It was assigned to the Internet Crimes Against Children (ICAC) unit. The criminal investigator spoke with the Subject. She said that, approximately 10 years ago, she found pictures of her daughter – who was then 13-15 years old – in NE#1’s possession. The photos were non-nude and appeared to have



been taken from a photo album. She said that, recently, she found photographs of her daughter that appeared to have been taken by NE#1 through his door. She also looked at a hard drive in his possession and saw approximately 140,000 photos of what appeared to be young women wearing gymnastics clothing. The women were posing in suggestive positions but were non-nude. She said that there was an upskirt picture that appeared to have been taken at a party. She did not see the picture but said that her daughter did. Lastly, she said that there were photos of her daughter's worn underwear. The Subject also told the criminal investigator that, multiple year ago, NE#1 threatened the Complainant because of the Complainant's relationship with the Subject. This included NE#1 pointing a firearm at the Subject.

The criminal investigator also spoke with the daughter. The daughter recounted seeing the 140,000 photos. She stated that they were of apparent young women in gymnastics clothing. She said that one photo included a topless woman. She recalled the photos of her underwear and she opined that NE#1 may have found them in the dirty laundry. She also recalled photos of some of her friends from when they were younger. The daughter said that she believed that the upskirt photo was of one of NE#1's work colleagues. The criminal investigator followed up with the daughter about the partially nude photograph. The daughter said that the woman appeared to be younger than 18-years-old and described the woman's appearance and breast development.

The criminal investigator interviewed the Complainant. He confirmed that he did not see the photos and that they were described to him. He denied that NE#1 ever threatened him – as the Subject recalled – or that NE#1 ever pointed a firearm at him.

The criminal investigation screened the substance of his investigation with a King County Prosecuting Attorney. The prosecuting attorney declined to prosecute, indicating that, based on the facts, there was insufficient evidence to establish criminal conduct on NE#1's part.

After the screening conversation, the criminal investigator was contacted by the daughter. She said that NE#1 was stalking her. She told the criminal investigator that NE#1 was notified of the investigation by another officer. She said that he confronted the Subject about the allegations that were made. She indicated that NE#1 told her and the Subject that he had deleted evidence. She further said that NE#1 acknowledged that what he had done was wrong but that he denied that it was illegal. The criminal investigator provided the daughter with information concerning criminal stalking and how to seek an anti-harassment order. The daughter stated that another resident of the building had also called the police regarding NE#1.

The criminal investigator spoke to that other individual, who was the building manager. She said that she received an anonymous note about malfeasance engaged in by NE#1 in the building. She said that, while the note concerned her, she had no personal knowledge of its contents or of any illegal or improper acts engaged in by NE#1. She reported it to the police.

This case was then referred back to OPA. As part of its investigation, OPA attempted to speak with the daughter but she was no longer willing to participate in an interview because of the toll this case and the criminal investigations had on her. OPA did interview the Subject. She reiterated the allegation that the Named Employee had improper photos. The Subject stated that she, the daughter, and NE#1 all lived in the same apartment building. She told OPA that she learned that NE#1 had been taking photos of the daughter and other woman in the building through his door and without their consent. She said that she informed the daughter of this and they accessed NE#1's apartment (the Subject had keys) and retrieved the hard drive. The Subject relayed that they found the photos identified above, as



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well as pictures of what appeared to be adolescent girls and an upskirt photo of an unidentified woman. The Subject agreed to allow OPA to come to her apartment and retrieve the photos that she downloaded from NE#1's hard drive. OPA downloaded the 195 photos possessed by the Subject. OPA downloaded one additional photograph from the daughter's laptop.

The photograph from the daughter's laptop was of two apparent teenagers wearing gymnastic leotards. They were not nude. The 195 photographs obtained from the Subject was of one young looking woman of an indeterminate age. The photographs were not nude but some of the poses were sexually suggestive. OPA did a Google search and determined that one of the photographs was located on a specific website. Working with ICAC, OPA determined that this was a pornographic website. ICAC verified that the site in question had malware on it and the possibility of child pornography. ICAC indicated that, just because the photograph was found on the website, it did not mean that this was where NE#1 downloaded it from. ICAC also noted that it would not be possible to track NE#1's IP address from the photos' metadata. ICAC could not definitely state that the woman in the photographs was a minor. OPA later determined that the 195 photographs were from a Brazilian clothing company and were in the public domain.

OPA further interviewed NE#1. His interview is set forth fully in the Case Summary for this investigation. In summary, he denied engaging in the conduct alleged by the Subject and the daughter, possessing child pornography, or committing other unlawful acts. He said that, while he did have an upskirt photo of a former colleague, she consented to it being taken and it was not illegal.

OPA showed NE#1 a sampling of nine photos that were among the 195 provided by the Subject. He said that he had not seen them before.

NE#1 confirmed that he had a hard drive with photos on it, including pornography, but said that these photos were legal. He told OPA that none of the nine photos shown to him at his interview were on the hard drive. He later agreed to provide the hard drive to OPA, and it was forensically examined. That examination yielded no evidence of contraband or illegal photos. In addition, there was no indication of the nine photos shown to NE#1 by OPA. NE#1 also denied storing or accessing child pornography on any Department devices. There was no evidence of any inappropriate activity engaged in by NE#1 on those devices.

NE#1 stated that the daughter created the allegations against him because she did not like him and does not want the Subject to be involved with him. He also contended that the daughter was a financial drain on the Subject and that he provided the Subject with money to support the daughter. He further stated that, at one point, the daughter fraudulently took out a credit card in his name but that he did not make a report. He provided OPA with financial documentation. While it showed potentially fraudulent activity on NE#1's account, it did not establish that the daughter took out the card.

OPA asked NE#1 whether he discussed the destruction of evidence or any other aspect of this case with the Subject. He first denied doing so and then, after further questioning and a discussion with his Guild representative, he confirmed that they did argue about the allegations. A new case was opened under 2020OPA-0062 to determine whether NE#1 violated policy when he did so.

Lastly, OPA interviewed NE#1's former colleague who was the subject of the upskirt photo. She recalled that the photo may have been taken at a Halloween party. She did not recall whether she provided consent for the photo but said that it was possible that she did.



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**ANALYSIS AND CONCLUSIONS:**

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

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

If NE#1 threatened the Complainant, possessed child pornography, or took photos illegally, this would constitute a violation of law contrary to SPD Policy 5.001-POL-2 and would also have been unprofessional.

While the Subject asserted the NE#1 threatened the Complainant and pointed a firearm at him, the Complainant and NE#1 denied that this was the case. While it seems that NE#1 and the Complainant had a contentious relationship based on both of their romantic involvement with the Subject, this did not rise to the level of criminal behavior.

In addition, while the Subject and her daughter reported that NE#1 had potential child pornography on his hard drive, all of the photos they described, except for one, did not meet that standard. The one outlier photo was never located by OPA and, from the description provided by the daughter to the criminal investigator, could very well have been of an adult female. Moreover, OPA could not foreclose that the upskirt photo was taken with the consent of the subject of the photo. Lastly, NE#1 denied taking other surreptitious photos of women in his building or of the daughter's underwear and OPA could not locate sufficient evidence to dispute this assertion. As such, OPA could not determine that NE#1 violated the law in this regard.

OPA reaches a similar conclusion with regard to whether NE#1 violated the Department's professionalism policy. Had he possessed child pornography, taken surreptitious photos, photographed the daughter's underwear, or taken an upskirt photograph without consent, OPA would have deemed these acts unprofessional. However, as discussed above, the evidence is inconclusive as to whether he did so. While it is undisputed that he possessed photos of young-appearing females and that he apparently kept these photos for his sexual gratification, OPA found no photos that were illegal. While OPA may find NE#1's predilections concerning, OPA cannot say that his possession of such photos in his personal capacity violated SPD's professionalism policy.

For the above reasons, OPA recommends that this allegation and Allegation #2 be Not Sustained – Inconclusive.

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

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

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

For the same reasons as stated above (see Named Employee #1 – Allegation #1), OPA recommends that this allegation be Not Sustained – Inconclusive.

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



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

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 11. Employees Will Cooperate with Department Internal Investigations***

As discussed above, OPA was informed by the Subject and the daughter of a statement made by NE#1 that he destroyed evidence relating to this case. If true, this would violate SPD Policy 5.002-POL-11, which requires SPD employees to cooperate with OPA investigation and prohibits them from knowingly destroying evidence.

At his OPA interview, NE#1 denied that he made this statement or that he destroyed evidence. He told OPA that all of the photographs in his possession were contained on his one hard drive. NE#1 provided that hard drive to OPA and OPA had it forensically examined. That forensic examination was able to view photos that currently existed on the hard drive as well as deleted photos. There was no evidence of any contraband on the drive, nor any evidence of the sampling of photos provided to OPA by the subject and the daughter. While OPA cannot foreclose the possibility that NE#1 had another hard drive, neither the Subject nor the daughter said that this was the case and OPA did not locate any evidence of its existence.

While OPA is concerned that the photographs presented to OPA by the Subject and the daughter were not present on NE#1's hard drive and while that raises the specter that some evidence may have been destroyed, OPA cannot prove that this is the case when applying the requisite burden of proof. Ultimately, OPA recommends that this allegation be Not Sustained – Inconclusive.

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