



CLOSED CASE SUMMARY

ISSUED DATE: AUGUST 26, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0078

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Inconclusive)
# 2	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 acted unprofessionally and violated the law based on conduct that occurred in the late 1970s and early 1980s.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

On January 16, 2016, the Catholic Diocese of Spokane published a list of current and former priests who had admitted engaging in sexual abuse, whose culpability had been established, or who had been “credibly” accused of sexual abuse. Named Employee #1 (NE#1), a civilian SPD employee, was included on this list.

On January 27, 2020, a prominent group of local Catholics publicly called for the Archdiocese to make records of sexual abuse to be available for review. On February 3, 2020, the Chief of Police sent a letter to OPA concerning the past allegation of sexual abuse against NE#1. The Chief noted that a review had been conducted into this incident by SPD in 2003. However, the Chief noted that neither she nor her leadership team were in place at the time of the original SPD review. The Chief also cited a “moral and professional” obligation to revisit this incident given “tremendous leaps forward over the past several years” in how such cases are investigated. The Chief’s letter coincided with media coverage of NE#1 by the Seattle Times on February 5, 2020.

OPA accordingly commenced an investigation into this matter. OPA identified that the specific allegation against NE#1 was that he sexually abused a teenage girl – referred to here as the Subject – on multiple occasions during the late 1970s and early 1980s while employed as a priest in Spokane, Washington. Given the nature of the allegation, OPA referred this matter to the Spokane Police Department (“Spokane PD”) for investigation. The criminal



investigator detailed that Spokane PD previously investigated this incident in February 2003. The 2003 investigation was commenced based on a conversation between the Subject, her sister, and a third party. The third party told someone else who, in turn, reported the allegation to a priest. The priest then notified Spokane PD of the allegation concerning ongoing abuse by NE#1. The sister stated that she did not witness any sexual abuse, but she was aware of the Subject's ongoing relationship with NE#1 and observed them together. On February 13, 2003, Spokane Police attempted to make contact with the Subject and the sister; however, both declined to take part in the investigation, stating that they intended their conversation about the abuse to be confidential.

The criminal investigator noted that, at the time the allegation was made, NE#1 was employed by SPD as a victim support advocate. Given this, an SPD employee contacted Spokane PD concerning their investigation. The SPD employee was notified that the Subject did not want to cooperate with Spokane PD and the investigation would not be proceeding any further. The SPD employee asked for Spokane PD to notify him if there were any developments in the investigation. It does not appear that SPD obtained or tried to obtain a statement from the Subject or NE#1, or that any disciplinary or employment action was taken against NE#1.

As part of the 2020 case, the criminal investigator contacted the Subject and spoke with her. The criminal investigator characterized the Subject as seeming surprised and confused as to why she was being contacted in 2020 about a 2003 incident. The criminal investigator told her that this was due to the referral from an outside law enforcement agency that employed NE#1 to determine whether there was any additional investigation that should be completed or evidence to be obtained that could inform the decision to bring charges against NE#1. The criminal investigator offered to connect the Subject with a Lutheran Community services sexual assault advocate. The Subject agreed and the criminal investigator did so. The criminal investigator attempted to interview the Subject several times both by contacting her directly and reaching out to her through the advocate. The Subject ultimately declined to participate in an interview. The criminal investigator told her that, if she wanted to proceed further with the investigation at a later time, she should contact him. The investigation was closed by Spokane PD and sent back to OPA.

OPA's investigation indicated that the Subject initially reported the criminal activity to the Catholic Diocese of Spokane in October 2002. On October 2, 2002, the Bishop deemed the allegation against NE#1 to be "credible" and barred NE#1 from priestly ministry. According to a priest interviewed by OPA, NE#1 did not challenge that prohibition.

OPA determined that an abuse allegation was deemed credible if it occurred during a time where the subject was employed as a priest in the same relative location as the victim. This determination also took into consideration other factors, including: whether there were other similar allegations; any credible statement provided by the victim; other corroborating evidence or testimony; and the accused's admission of guilt, if applicable. OPA further spoke to an attorney for the Archdiocese of Seattle concerning this issue. The attorney told OPA that, based on his review of this incident, the determination of credibility for the allegations against NE#1 was based entirely on the Bishop's determination in October 2002. The attorney told OPA that, while a consulting company was hired to review the allegations, they did not conduct a supplemental review of the report against NE#1 but instead relied on the Bishop's decision. The Archdiocese of Seattle also did not conduct its own supplemental review of the allegations against NE#1. OPA requested additional information concerning what facts supported the Bishop's decision; however, OPA was informed that the Bishop had "no specific recollection as to what was done at the time to deem the allegation credible."



OPA further learned that the Subject filed a civil lawsuit against the Catholic Diocese of Spokane on May 20, 2004. It appears that the case was later settled.

OPA lastly determined that there was no evidence of any past or present sexual abuse allegations against NE#1 aside from those made by the Subject.

OPA made its own attempts to contact and interview the Subject through the advocate. In June of 2020, OPA was informed that the Subject was unwilling to participate in an OPA interview.

OPA then interviewed NE#1, who was represented by an attorney. NE#1 said that, prior to his employment by SPD as a victim support advocate, he was a priest in Spokane. He was employed in that role from approximately 1976 to 1981. NE#1 was familiar with the accusation made against him. He denied engaging in the sexual abuse alleged. He said that he did not have an opportunity to present his side of the story directly to the Bishop. NE#1 said that he did not know how the decision was made and was provided very little information concerning this. NE#1's attorney interjected that the "credible" determinations were based simply on reports from victims and were not evidentially substantiated. The attorney stated that NE#1 was not involved in the later settlement by the Catholic Diocese of Spokane. NE#1 further explained that, based on his understanding, when the Catholic Diocese of Spokane went bankrupt, it simply settled all of the pending cases against it. NE#1 confirmed that he was prohibited from continuing his priestly ministry by the Bishop. He said that this was the Catholic Diocese of Spokane's protocol whenever an allegation was made. He did not challenge the decision as he was no longer a priest and was not intending on engaging in active ministry in the future.

NE#1 was not familiar with the criminal investigation conducted by Spokane PD. He told OPA that he was familiar with the Subject and she was a member of the parish. He said that he spent time with her one on one because, as a priest, he was trying to connect with people. He stated that she was one of many people that he tried to connect with on a group and individual basis. He did not recall how many times he spent time with her one on one. He did not recall, for that matter, the amount of occasions he spent time with any other individuals. He saw her outside of the church on several occasions, including having pizza with her alone (and, on other occasions, with her and additional people) and going to a concert with her once on his birthday. They went to the concert alone. He said that her parents were aware of this. He said that there was "no particular reason" why he would have gone out with the Subject alone. When pressed on this, he said that this was just what was done at that time. He acknowledged that she may have been under 16 for at least part of that time but thought that she was over 16 when they went to the concert ("not that this would have made any difference"). He said that it was not unusual for him to see other people outside of the church, as he did with the Subject. He again denied having sexual contact with the Subject and said that he did not know why she would make up this allegation.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. SPD Policy 5.001-POL-10 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-10.)

The allegations against NE#1 are concerning. It was alleged that he sexually abused a teenage girl multiple times over a five-year period. NE#1 denied engaging in this behavior. However, the following facts raise significant issues in OPA's mind. First, the Catholic Diocese of Spokane found the Subject's claim to be credible. While NE#1 and his attorney opined that this was not based on a rigorous review or high evidentiary standard, OPA finds it significant



that NE#1 did not challenge the determination and, instead, accepted the prohibition on him engaging in further ministerial duties. Second, there is no evidence suggesting that there are any questions concerning the Subject's credibility. While NE#1 said that she made the allegations up, he provided no reason why she possibility would have done so. Third, the Catholic Diocese of Spokane later settled a lawsuit concerning, in part, the allegations against NE#1. Again, while settlements can be reached for a number of strategic reasons, this suggests that there was some perceived legal risk in litigating the Subject's claims. Fourth, NE#1 admitted spending time one-on-one with the Subject, including attending a concert with her on his birthday. In explaining his conduct, NE#1 said that this was just what was done at the time; however, OPA finds this explanation to be questionable. OPA further notes that, given his time spent alone with the Subject, NE#1 would have had the opportunity to sexually abuse her as she alleged. That NE#1 was not alleged to have sexually abused any other individuals is certainly relevant to note, but this does not, in OPA's opinion, diminish the credibility of the allegations made by the Subject.

The above being said, the lack of a statement from the Subject across any of the criminal or administrative proceedings leaves an evidentiary gap. Without being able to assess this statement and to question NE#1 about its substance, OPA cannot conclusively establish that he engaged in sexual abuse. This conclusion is further buttressed by the similar lack of sufficient information in OPA's possession concerning how the Bishop reached the determination that the allegations against NE#1 were credible. If, as NE#1 and his attorney suggested and as appears possible from the Catholic Diocese of Spokane's own website, credibility was based solely on whether the allegations could have occurred when evaluating timelines and opportunity, this would not, without more, be sufficient to establish misconduct on NE#1's part.

Ultimately, OPA must be able to establish that NE#1 engaged in the conduct alleged when applying the requisite burden of proof. For the reasons set forth above, OPA cannot meet this standard here. In reaching this finding, OPA is careful to note that this is not an exoneration of NE#1. It is simply a recognition that there is insufficient evidence to determine what occurred and whether NE#1 violated the law and acted unprofessionally.

Accordingly, 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 10. Employees Shall Strive to Be Professional

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)**