



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 13, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0432

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 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons	Sustained
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Sustained

Imposed Discipline

Retired Prior to Proposed DAR

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons	Not Sustained (Unfounded)
# 3	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:

It was alleged that multiple Named Employees used SPD precincts as their voting addresses and may have voted outside of their legal districts. It was further alleged that this conduct was contrary to law and SPD policies, as well as unprofessional.

ADMINISTRATIVE NOTE:

On February 12, 2021, OPA issued findings against seven other former and present SPD employees for using precincts for their voting addresses. At that time, Named Employee #1 (NE#1) was on extended leave. As such, no findings against him were issued in that prior DCM. The allegations against NE#1 and possible other unknown SPD employees are discussed herein.



SUMMARY OF INVESTIGATION:

OPA received an anonymous complaint alleging that a number of SPD officers – including NE#1 – had registered to vote at SPD precincts rather than at residential addresses. It was further alleged that, by doing so, these officers may have violated the law and SPD policy. This investigation ensued.

At the outset, OPA referred this matter to SPD for criminal investigation. SPD did not conduct any criminal investigation at all, citing to an SPD Captain’s erroneous assertion that she was personally aware that the Named Employees lived within Seattle and to an ongoing investigation by the King County Department of Elections. No statement was provided by the Captain and her opinion regarding the residence status of the officers was conveyed by a Lieutenant. The only “evidence” included with the criminal investigation was a news article from KOMO, which referenced an interview with a Department of Elections official. SPD returned the case to OPA and OPA commenced its administrative investigation.

OPA reviewed the RCW provisions governing voting and voting registration and identified the relevant law. Based on the contention by several of the involved officers that they may have been inadvertently registered to vote at a precinct due to their usage of the precinct for a vehicle registration or a driver’s license, OPA also examined the law in this area. OPA determined that RCW 29A.08.340 governs registering to vote or updating a voter registration at the same time as registering a vehicle or obtaining a Washington State driver’s license. RCW 29A.08.340 indicates that, to do so, a separate application is required, including the provision of a personal address, and attesting to the accuracy of that information. The voter registration application is further recorded and entered separately.

OPA confirmed that, at the time the complaint was made, all of the involved officers were registered to vote at SPD precincts. Specific to NE#1, OPA verified that he did not have a home address on file with the Department and used a P.O. Box in Seattle for official correspondence.

OPA determined that the King County Department of Elections was conducting an investigation into the voting registration of the Named Employees and whether they engaged in voter fraud. As of the writing of this DCM, the Department of Elections investigation remained ongoing and, depending on findings, could result in a referral to a prosecutor for the filing of charges.

Lastly, as part of its investigation, OPA interviewed the majority of the involved officers. Two declined to be interviewed as they had since left the Department. OPA was unable to interview NE#1 at that time as he was on extended medical leave. However, NE#1 did not ever return to SPD and retired while still on leave. Once he retired, he did not respond to OPA’s attempt to interview him.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. Included in the ambit of this policy is compliance with Washington State and local laws concerning voting and voting registration.



As discussed herein, it is undisputed that NE#1 used a precinct for his voting address. Moreover, unlike some of the other Named Employees, NE#1 made the decision to not cooperate in this investigation and, accordingly, provided no evidence that he lived within Seattle, let alone within the confines of the North Precinct.

It is clear that this conduct was contrary to both RCW 29A.08.010 and 29A.08.230, which require registration at a “residential address” and the attestation to the accuracy of the information provided under oath, respectively. However, the question here, as in the prior case, is whether NE#1 had sufficient criminal intent to establish the “knowing” provision of inaccurate information.

As set forth more fully in the earlier DCM, OPA does not possess expertise in the investigation in or prosecution of voter violations. This is within the purview of the King County Board of Elections and/or the County Auditor. Moreover, based on OPA’s reading of RCW 29A.08.010, these entities have sole jurisdiction to investigate these cases and, if criminal conduct is determined, to refer them to a prosecuting attorney. Given this, as well as due to the fact that the Board of Elections’ investigation is still pending, OPA declines at this point to opine on whether NE#1 engaged in intentional voter fraud as contemplated by the RCW.

To the extent the Board of Elections determines that NE#1 did so and the case against him is referred to a prosecuting attorney and results in a plea or conviction, OPA will exercise its jurisdiction at that time. Notably, Section 3.6(B) of the collective bargaining agreement between the City of Seattle and the Seattle Police Officers’ Guild specifically authorizes this (*“Provided, however, in the case of a criminal conviction, nothing shall prevent the Department from taking appropriate disciplinary action within forty-five (45) days, and on the basis of, the judicial acceptance of a guilty plea (or judicial equivalent such as nolo contendere) or sentencing for a criminal conviction.”*).

Until that time, however, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

5.001 - Standards and Duties 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons

SPD Policy 5.001-POL-20 prohibits Department employees from using a Department mailing address for personal reasons. Unlike the past SPD policy cited by NE#6, there is no exemption for vehicle registrations. Indeed, the current policy explicitly states that the prohibition extends to “using a Department address for a driver license, vehicle registration, telephone service, etc..”

NE#1 registered to vote at an SPD precinct. This constituted a clear violation of this policy. Moreover, unlike with some of the other involved officers, NE#1 provided no mitigating evidence. For example, NE#1 did not demonstrate that he lived within the confines of the North Precinct at the time he was registered to vote there.

As such, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #1 - Allegation #3

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



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.)

OPA finds that NE#1’s use of a precinct for his voting registration also violated the Department’s professionalism policy. In evaluating this allegation, OPA concludes that, by acting directly contrary to law and policy, NE#1 undermined public trust and confidence in himself and in the Department. This is the case even if criminal liability cannot be proved because of the higher evidentiary burden required to establish intent.

Ultimately, as NE#1 is well aware, ignorance of the law is not a defense. This is especially the case for police officers who are entrusted with the responsibility of enforcing it. Everyone, including law enforcement officers, is and should be equal under the law and held to the same standards. This informs OPA’s determination that a finding that NE#1 violated this policy is warranted here.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

Named Employee #2 - Allegation #1

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

As part of its investigation, OPA evaluated whether other officers, in addition to the identified Named Employees, improperly registered to vote at SPD precincts. OPA ultimately found no evidence that any officers did so aside from those investigated by OPA. Accordingly, OPA recommends that all of the allegations against the unknown SPD employee(s) be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

5.001 - Standards and Duties 20. Employees Shall Not Use a Department Mailing Address for Personal Reasons

For the same reasons as stated above (see Named Employee #1 – Allegation #2), OPA recommends that this allegation be Not Sustained - Unfounded.

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

Named Employee #2 - Allegation #3

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

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be Not Sustained - Unfounded.

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