



## **CLOSED CASE SUMMARY**

ISSUED DATE: JANUARY 20, 2022

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0695

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

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 – Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Unfounded)
# 2	1.110 – Public Information POL-2 Release of Information to the Media 3. There is Certain Information That Can Generally Be Released	Not Sustained (Lawful and Proper)
# 3	5.001 – Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Lawful and Proper)

***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:**

The Complainant alleged that SPD lied about receiving the Subject’s medical records from Harborview Medical Center and that SPD improperly released information to the media.

#### **ADMINISTRATIVE NOTE:**

This case concerns statements made by SPD’s Public Affairs Team related to the Subject’s arrest. Allegations that SPD used excessive force during the arrest which caused the Subject’s injury are being investigated separately under case number 2020OPA-0688 and are not evaluated further below.

Lastly, as this case concerns unknown SPD employees, it is not governed by the contractually set 180-day deadline. Accordingly, the 180-day deadline is administratively set as the date of this DCM.

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

During an election day protest on November 4, 2020, SPD officers arrested the Subject outside of the East Precinct for suspected property damage. The Subject experienced a medical episode during the arrest and the Seattle Fire Department transported the Subject to Harborview Medical Center (HMC) for a medical evaluation. The incident drew considerable media attention and was the subject of various print, television, and online media reports. The SPD’s Force Investigation Team (FIT) investigated the use of force during the arrest.



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On November 5, 2020, SPD's Public Affairs Team posted an entry on the SPD Blotter about the Subject's arrest and subsequent transport to HMC. The report stated that at the time it was "unclear whether the medical issue was related to the arrest" and confirmed that SPD's Force Investigation Team was reviewing the incident. A few hours later, the Public Affairs Team posted an update that stated that "the subject's medical episode was potentially related to a substance the subject had ingested prior to police contact." In response to media inquiries, the Public Affairs Team cited HMC's Public Information Officer (PIO) as the source for stating that the subject had ingested substances potentially related to the medical incident. On November 9, 2020, HMC released an email statement denying that a public information officer released any of the Subject's medical information to SPD personnel.

Subsequently, the Complainants contacted OPA. They alleged generally that members of the SPD Public Affairs Team lied about having received the information from HMC sources.

Email exchanges between Mayor Durkan's staff, Public Affairs personnel, Chief of Police Diaz's office, and FIT personnel beginning on November 5 evidenced the urgency to update the SPD Blotter due to increasing media inquiries regarding the Subject's arrest. The emails indicated that the Subject had tested positive for a narcotic while at Harborview. The emails further indicated that this information came from HMC's PIO and FIT personnel.

FIT records showed that HMC faxed a copy of the Subject's medical records to a FIT Detective on November 6, 2020. However, the email threads from November 5 showed that an SPD sergeant knew of the existence of the drug test results prior to this release of information on November 6. The emails did not name the HMC source of the information about the Subject's medical status or who reported to the Public Affairs Team that the Subject had tested positive for the narcotic. The SPD's Public Affairs Team asked where SPD sourced the information in the update. An SPD sergeant replied that the information was "confirmed by FIT and HMC's PIO" (Public Information Officer).

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

##### ***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete In All Communication***

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications. The Complainants alleged that unknown SPD officers were dishonest in two respects: first, when they lied about the Subject testing positive for a narcotic; and second, when the stated that this information came from HMC.

With regard to the first allegation, the Subject did, in fact, test positive for a narcotic. As such, this was not a false statement. With regard to the second allegation, a review of emails appears to indicate that the information did come from HMC, even though the specific source was unclear. Indeed, given the nature of the information, there is nowhere except HMC that it could have come from. Ultimately, the evidence indicates that this did not constitute dishonesty on the part of any SPD employee.

As such, OPA recommends that this allegation be Not Sustained – Unfounded.

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



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

***1.110 Public Information POL-2 Release of Information to the Media 3. There is Certain Information That Can Generally Be Released***

SPD policy 1.110-POL-2(3) permits the release of certain information to the media, including “readily observed information regarding medical conditions” or suspects of victims. (SPD Policy 1.110-POL-2(3)) SPD policy limits “detailed medical information, diagnosis or prognosis” from being released. (*Id.*) SPD policy 1.110-POL-1(2) further provides that the Chief of Police may authorize the release of information to the media. (SPD Policy 1.110-POL-1(2))

The email thread referenced above shows that SPD Chief of Police was included on the decision to release the update that referenced the Subject’s alleged ingestion of a narcotic. While the information about the drug test was not readily observable, OPA does not find that it amounted to “detailed medical information, diagnosis or prognosis.” The presence of the drug does not mean it was the cause of the medical episode during the arrest. Rather, it was a fact about the arrest that SPD became aware of and that the Chief deemed necessary to be released to the public given the media attention the incident had received and given that the ingestion of the narcotic could be relevant to the Subject’s loss of consciousness, which SPD denied causing through force. Ultimately, OPA finds this decision to be within the Chief’s discretion per SPD policy and, as such, recommends 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 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 including state laws. (SPD Policy 5.001-POL-2) Washington law further permits a healthcare provider to disclose certain health care information to police, including diagnosis and “extent and location of injuries.” (RCW 7.02.200(1)(f).) This is the case where the police “brought, or caused to be brought, the patient to the health care facility or health care provider.” (RCW 7.02.200(1)(f).)

While, as discussed above, OPA could not confirm who at HMC provided this medical information to SPD, it is clear that someone employed by the hospital did so. Based on the RCW, this did not constitute a violation of law as SPD caused the Subject to be brought to HMC, and the information disclosed was relevant both the Subject’s diagnosis and to the extent and nature of their injuries.

As such, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**