



## OFFICE OF PROFESSIONAL ACCOUNTABILITY

### Closed Case Summary

Complaint Number OPA#2015-1908

Issued Date: 08/17/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 5.120 (II.H) Secondary Employment: Responsibilities – Officers are expected to take appropriate law enforcement action whether on-duty or off-duty (Policy that was issued 04/19/2014)
OPA Finding	<b>Not Sustained</b> (Inconclusive)
Allegation #2	<u>Seattle Police Department Manual</u> 5.001 (10) Employees Shall Be Truthful and Complete In All Communications (Policy that was issued 04/19/2014)
OPA Finding	<b>Not Sustained</b> (Inconclusive)
Final Discipline	N/A

#### **INCIDENT SYNOPSIS**

The Named Employee was working at a downtown Seattle restaurant in an off-duty, secondary employment capacity.

#### **COMPLAINT**

The complainant alleged that the Named Employee made false statements to officers while he was working off duty. OPA added an allegation of failure to take action when engaged in Secondary Employment.

## **INVESTIGATION**

The OPA investigation included the following actions:

1. Review of the complaint email
2. Interview of the complainant
3. Search for and review of all relevant records and other evidence
4. Review of In-Car Video (ICV)
5. Interview of witnesses
6. Interview of SPD employees

## **ANALYSIS AND CONCLUSION**

The Named Employee was working at a downtown Seattle restaurant in an off-duty, secondary employment capacity. He had a properly approved permit to do so and was in uniform and equipped with a SPD radio. The Named Employee said that, when a confrontation and physical scuffle broke out between a civilian security guard and a patron of the restaurant (the complainant), the Named Employee was seated in the restaurant taking a meal break. Hearing the commotion, the Named Employee said he rose from his seat and went to investigate. By the time he got there, the complainant was outside the restaurant and claimed to have hit his head when the security guard pushed him outside. The Named Employee asked if the complainant wanted the Seattle Fire Department to come and assess his injury, but the complainant declined. The complainant told the Named Employee he wanted the security guard charged with assault and the Named Employee used his police radio to request an on-duty patrol officer to respond to investigate the reported assault. The complainant alleged the Named Employee was watching as the security guard assaulted him (the complainant) and failed to come to the aid of the complainant or stop the assault. OPA also raised the question of why the Named Employee did not handle the assault investigation and report himself, rather than calling for a patrol unit to do that. Based on the preponderance of the evidence from the investigation, it is not possible to determine whether the Named Employee saw the physical interaction as reported by the complainant. The evidence does show that the Named Employee went outside to check on the situation, offered to summon medical assistance for the complainant and took action to arrange for an on-duty officer to take the complainant's assault report. A reasonable understanding of the policy could be that, when an off-duty officer takes law enforcement action him or herself (such as an arrest), that officer is responsible for "prisoner processing, investigatory paperwork, and reports required by Department policy" (SPD Policy §5.120(II.H)). The OPA Director did not find a preponderance of evidence to support either the allegation that the Named Employee witnessed the altercation between the complainant and the security guard and failed to take law enforcement action, or the allegation the Named Employee failed to write the assault report when he was clearly required by policy to do so.

The complainant alleged the Named Employee was untruthful when he (the Named Employee) told one of the patrol officers that he (the Named Employee) did not witness anything of what happened. The complainant further alleged the Named Employee was untruthful in his (the Named Employee) statement to the patrol officers that the complainant had told the Named

Employee that he (the complainant) did not want the Named Employee to take the assault report because the Named Employee had a conflict of interest. During his first OPA interview, the Named Employee denied telling the other officers that the complainant thought the Named Employee had a conflict of interest and said the complainant never told him that. However, In-Car Video (ICV) from the cover officer captured a conversation in which the Named Employee told the cover officer, “He [the complainant] didn’t think I would be impartial, so I said if that’s the case, I’ll call.” When shown this recorded statement during a second OPA interview, the Named Employee stated that he did not recall making the statement, had not seen the ICV before his second OPA interview and had answered OPA during the first interview to the best of his recollection at the time. The Named Employee had no specific explanation as to why he told the cover officer the complainant had questioned his (the Named Employee) impartiality if, in fact, the complainant had never done so. The Named Employee appears to have made two statements that were factually untrue. The first was to the cover officer at the scene of the incident and the second was during the Named Employee’s first OPA interview. The question at hand is whether the Named Employee intentionally made these statements knowing them to be false. Under Paragraph 3.1 of the Collective Bargaining Agreement between the City and the Seattle Police Officers Guild, the standard of proof required for a sustained finding of dishonesty is “clear and convincing.” The first statement (the one made by the Named Employee to the cover officer) could have been based on the Named Employee’s assumption that the complainant knew he (the Named Employee) was a restaurant coworker with the security guard and would naturally see a conflict of interest; or could have been a simple misstatement of fact; or could have been an intentional lie. The OPA Director did not find the evidence from this investigation adequate to resolve this question at a clear and convincing level. The second inaccurate statement, the one made during the Named Employee’s first OPA interview, was either an intentional lie or a misstatement of fact based on faulty memory. The OPA Director did not find the evidence from this investigation adequate to resolve this question at a clear and convincing level.

## **FINDINGS**

### **Named Employee #1**

#### Allegation #1

The preponderance of the evidence could not prove nor disprove the allegation against the Named Employee. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Secondary Employment: Responsibilities – Officers are expected to take appropriate law enforcement action whether on-duty or off-duty.*

#### Allegation #2

The evidence from this investigation did not resolve the allegation against the Named Employee at a clear and convincing level. Therefore a finding of **Not Sustained** (Inconclusive) was issued for *Employees Shall Be Truthful and Complete In All Communications.*

*NOTE: The Seattle Police Department Manual policies cited for the allegation(s) made for this OPA Investigation are policies that were in effect during the time of the incident. The issued date of the policy is listed.*