



OFFICE OF PROFESSIONAL ACCOUNTABILITY

Closed Case Summary

Complaint Number OPA#2016-0303

Issued Date: 10/27/2016

Named Employee #1	
Allegation #1	<u>Seattle Police Department Manual</u> 5.001 (14) Integrity and Ethics: Employees Obey any Lawful Order Issued by a Superior Officer (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Training Referral)
Allegation #2	<u>Seattle Police Department Manual</u> 5.190 (1) Court Appearances: Subpoenas and Court Appearances (Policy that was issued April 1, 2015)
OPA Finding	Not Sustained (Management Action)
Final Discipline	N/A

INCIDENT SYNOPSIS

The Named Employee issued a parking ticket to the complainant's vehicle, and was subpoenaed for court in connection with an impounded vehicle.

COMPLAINT

The subject reported that the Named Employee did not tell the truth when issuing a parking ticket to his vehicle. The subject alleged that the vehicle was not parked on a city street as ticketed, but was parked on a flat-bed truck and should not have been issued a parking ticket for parking on a city street. OPA declined to investigate the appropriateness of the violation listed on the parking citation. This is a matter properly handled by the Municipal Court.

In the course of the Intake investigation it was also alleged by the complainant, a supervisor within the Department, that the Named Employee failed to respond to a court subpoena, citing training as the reason for not attending court despite her supervisor saying the seminar was not a reason to miss a court date. The Named Employee chose to attend a seminar, not training, on the day of court.

INVESTIGATION

The OPA investigation included the following actions:

1. Review of the complaint
2. Search for and review of all relevant records and other evidence
3. Interviews of SPD employees

ANALYSIS AND CONCLUSION

The complainant alleged that the Named Employee may have failed to obey an order from a supervisor to go to court in response to a subpoena instead of attending a seminar. The preponderance of the evidence from the OPA investigation showed the Named Employee never received a direct order to skip the seminar once she received the subpoena. The OPA investigation was not able to discover evidence there had been any direct communication between the Named Employee and her supervisor in which it was clear to the supervisor the Named Employee was planning to not appear in court. The subpoena was for a hearing on a vehicle impound. Hearings regarding impounds are extremely time sensitive and cannot be rescheduled. Given there did not appear to have been an order from a supervisor to the Named Employee in connection with the seminar and the subpoena, there was no act of insubordination. However, the Named Employee was not clear and direct with her supervisor and appeared to have been hasty in dismissing her obligations concerning the subpoena.

The complainant alleged that the Named Employee failed to appear in court as ordered by a subpoena. The preponderance of the evidence from the OPA investigation showed that the Named Employee did not appear as ordered. The evidence also showed the Named Employee was not excused by the Court from this requirement. While this failure to appear constituted a violation of SPD Policy §5.190.I(A), paragraph II of this same policy contains a process for handling a failure to appear (FTA) in court by either a police officer or a parking enforcement officer. This process was not followed in this case and the Named Employee's FTA in court was sent directly to OPA. According to SPD Policy 5.190.II, a first FTA by an employee is to be documented in the employee's record as a non-disciplinary counseling. By means of the Training Referral for allegation #1, above, this counseling will be accomplished for the Named Employee's decision to attend the seminar instead of appearing in court as ordered.

The FTA process described in paragraph II of §5.190 depends on a so called SPD "Court Coordinator" to receive FTA notices from the Municipal Court and notify the appropriate SPD supervisor so officers can be held accountable and not make the same mistake in the future. However, no such position exists in SPD. It was eliminated more than four years ago and its FTA duties were never reassigned to someone else. This gap in the Department's ability to hold police and parking enforcement officers accountable has been present for least the last four years. In 2012, the OPA auditor pointed out the problem in both her semiannual reports. Although SPD acknowledged the problem in 2012 and committed at the time to solving it, the gap still remains. No one at SPD is responsible for receiving FTA notices from the Municipal Court. There is no effective method for the Court to inform SPD when police and parking enforcement officers do not show up in response to a subpoena. Consequently, officers who inconvenience both the Court and those appearing to contest a citation are not held accountable. They experience no consequence for their failure to comply with a Court Order. This situation must be addressed without delay. A Management Action Recommendation has been made to the Chief of Police

FINDINGS

Named Employee #1

Allegation #1

The evidence showed that there was no act of insubordination. However, the Named Employee was not clear and direct with her supervisor and appeared to have been hasty in dismissing her personal obligation to make certain she had been released by the court from the obligations of the subpoena. Therefore a finding of **Not Sustained** (Training Referral) was issued for *Integrity and Ethics: Employees Obey any Lawful Order Issued by a Superior Officer*.

Required Training: The Named Employee's supervisor should counsel the Named Employee regarding her obligation to appear in court as ordered by a subpoena. She should be sternly reminded that a subpoena is a Court Order that must be followed unless it is vacated or amended by the judge who issued it. She also should be told to be more candid and direct in her communications with supervisors.

Allegation #2

The preponderance of the evidence from the OPA investigation showed that the Named Employee did not appear as so ordered on the court date. The process for handling a failure to appear in court was not followed in this case. Therefore a finding of **Not Sustained** (Management Action) was issued for *Court Appearances: Subpoenas and Court Appearances*.

The OPA Director's letter of Management Action recommendation to the Chief of Police is attached to this report.

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.



City of Seattle

Office of Professional Accountability

October 20, 2016

Chief Kathleen M. O'Toole
Seattle Police Department
PO Box 34986
Seattle, WA 98124-4986

RE: MANAGEMENT ACTION RECOMMENDATION (2016OPA-0303)

Dear Chief O'Toole:

The Office of Professional Accountability (OPA) recently completed an investigation into an allegation that a Parking Enforcement Officer (PEO) failed to appear in Municipal Court in response to a valid subpoena served on that PEO. This mandatory court appearance was for a hearing on a vehicle impound the PEO had made. As you may know, impounded vehicles accumulate tow and storage fees that sometimes exceed the value of the vehicle. In order to prevent excessive charges to either the vehicle owner or the City, the Municipal Court schedules hearings within a day or two of receiving notice from the vehicle owner of his or her desire to contest the impound. In this case, the PEO received a subpoena to attend a hearing the next day but chose, instead, to attend a previously-scheduled, non-mandatory seminar sponsored by the Department. The Court did not excuse the PEO from its order to appear. As a result of the PEO's non-appearance, the vehicle was released from impound and the City was ordered to cover the accumulated tow and storage fees.

Even though the OPA investigation found the PEO violated SPD Policy Section 5.190.I.A by failing to appear in court as ordered, a sustained finding could not be recommended and discipline not imposed because SPD does not have a system in place to receive, track and document failures to appear in court as required by SPD Policy 5.190. Section I of that policy obligates both police officers and PEOs to comply with subpoenas, but the series of steps described for resolving a scheduling conflict only applies to police officers. Section II describes a structure and series of steps for handling failures to appear by police officers and PEOs. However, this structure and process are predicated on the existence of a SPD Court Coordinator, a position which has not existed in SPD for over four years. To the best of my knowledge no one in SPD is assigned the Court Coordinator duties. As a result, the Municipal and Superior Courts have no one at SPD to notify when a police officer or PEO fails to appear in response to a subpoena. In addition, there is no one at SPD to keep track of the number of times each police officer or PEO fails to appear and notify the officer's or PEO's Bureau Chief of this failure as described in the policy. This is important because SPD Policy Section 5.190.II.B describes a process of progressive discipline by which multiple failures to appear by a police officer or PEO are supposed to result in a series of defined responses by the Department, ultimately reaching a disciplinary level. It was this lack of a tracking system and record of possible past failures to appear that prevented OPA from recommending to the Department that it treat this specific failure to appear as anything other than a first time violation by this particular PEO.

SPD Policy 5.190 went into effect on April 1, 2009. It is my understanding that a Court Coordinator position existed at the time but was subsequently eliminated as the City reduced spending in the wake of the so called "Great Recession." When the position was eliminated, no one was assigned to perform the duties described in the policy. In both of her 2012 semi-annual reports, the OPA Auditor highlighted the absence of a Court Coordinator in SPD or anyone to handle the various duties assigned by policy to that position. The OPA Auditor recommended that SPD update its policy to address the gap created when the position was eliminated. Following a 2013 OPA investigation into a missed court appearance by a SPD police officer, I repeated the OPA Auditor's recommendation to SPD.

In light of the history of this problem and the barrier to accountability it creates, I make the following recommendation:

Recommendation: I recommend SPD commit to work with court and prosecutorial staff to adopt by a date certain a revised Policy 5.190 that effectively addresses the problems inherent in the existing policy, as noted above, to better serve the public and hold police officers and PEOs accountable to appear in court when ordered to do so.

Thank you very much for your prompt attention to this matter of public trust and confidence in the professional conduct of the SPD and its employees. Please inform me of your response to this recommendation and, should you decide to take action as a result, the progress of this action.

Sincerely,

A handwritten signature in blue ink that reads "Pierce Murphy". The signature is written in a cursive style with a large initial "P".

Pierce Murphy
Director, Office of Professional Accountability