



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 19, 2018

CASE NUMBER: 2017OPA-0744

Allegations of Misconduct & Director’s Findings

Named Employee #1

| Allegation(s): | | Director’s Findings |
|----------------|--|-----------------------------------|
| # 1 | 15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100) | Not Sustained (Unfounded) |
| # 2 | 15.410 - Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect | Not Sustained (Training Referral) |
| # 3 | 15.410 - Domestic Violence Investigation 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence | Not Sustained (Training Referral) |
| # 4 | 15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence | Not Sustained (Training Referral) |
| # 5 | 15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence | Not Sustained (Training Referral) |
| # 6 | 15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances | Not Sustained (Training Referral) |
| # 7 | 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times | Not Sustained (Training Referral) |

Named Employee #2

| Allegation(s): | | Director’s Findings |
|----------------|--|-----------------------------------|
| # 1 | 15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100) | Not Sustained (Unfounded) |
| # 2 | 15.410 - Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect | Not Sustained (Training Referral) |
| # 3 | 15.410 - Domestic Violence Investigation 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence | Not Sustained (Training Referral) |
| # 4 | 15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence | Not Sustained (Training Referral) |
| # 5 | 15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence | Not Sustained (Training Referral) |
| # 6 | 15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances | Not Sustained (Training Referral) |
| # 7 | 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times | Not Sustained (Training Referral) |

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 Anonymous Complainant indicated that the Named Employees failed to properly follow policy regarding a Domestic Violence call to which they responded, including, but not limited to not taking a report on prior abuse and telling her she could not ask her husband to leave. The Named Employees were also alleged to have been unprofessional when they allegedly focused on her mental health status instead of her claims of domestic violence.

STATEMENT OF FACTS:

The Named Employees were dispatched to a call for service at the residence of the Complainant, who alleged possible domestic violence. The Complainant alleged that her husband, who had not been staying at her home, was coming over despite her request that he not do so. During their drive to the Complainant's residence, the Named Employees searched for open court orders in place between the Complainant and her husband. However, they did not find anything responsive.

When they arrived at the home, the Complainant was distraught and was crying. Named Employee #1 (NE#1) was the primary officer on the call. NE#1 asked where her husband was at that time, and she stated that he was inside the house. The officers observed the husband walking up the stairs with a box. The officers made contact with him and he agreed to walk over to his vehicle and speak with officers.

The officers talked with the Complainant. She stated that she was speaking with a domestic violence counseling service and relayed that she had been told to not allow her husband to come to their home alone and that he should not unilaterally set up a parenting plan. The officers informed the Complainant that because their home was also the husband's legal residence, they could not force him to leave. The Named Employees reported being concerned with the Complainant's emotional state, with NE#1 recounting that he "feared for her well-being."

The husband indicated that he was staying with a friend but came to the house to pick up his motorcycle. He claimed that the Complainant had threatened to hit his motorcycle with a bat. The husband said that a friend was coming over to help him move the bike. During the officers' conversation with the husband, the friend arrived and the bike was loaded into a truck. The husband relayed that his wife suffered from depression. The In-Car Video (ICV) of the incident documented that the husband told the officers that the Complainant had previously threatened suicide and that he tried to get her to see a mental health counselor but that he could not force her to do so.

The Named Employees reported being concerned with the Complainant's emotional state, with NE#1 recounting that he "feared for her well-being." The Complainant reported to the officers that she was taking anti-anxiety medication. NE#1 reported asking her whether she felt like hurting herself and she said no. NE#1 stated that she appeared to be more agitated after that conversation. NE#1 also told the Complainant that they could not force her to seek counseling.

During their conversation with the husband, they learned he owned a firearm and that this firearm was inside of the residence. The officers asked the Complainant whether they could take the gun that was in the house. She initially said no on the basis that "she didn't want [SR] to have it because she feared for her safety." The officers then spoke to the husband about the gun and asked whether they could take it and turn it in for destruction, he agreed and the officers did so.

Ultimately, the officers did not arrest the husband nor, for that matter, did they request that he leave the residence. As they discussed with the Complainant, the officers did not believe that they had a legal basis to request that he leave his home. The officers further did not believe that they had probable cause to arrest the him.



NE#1 completed a DV Supplemental Form, provided the Complainant with an SPD DV pamphlet, and spoke to her about obtaining court orders against her husband. NE#1 did not take a formal statement from the Complainant using the sworn affirmation, did not collect evidence from her concerning past alleged abuse, and did not complete several other of the required steps when investigating a domestic violence incident.

Approximately two weeks after the incident, the Complainant called the Southwest Precinct and spoke with an Acting Sergeant. The Acting Sergeant went to the Complainant's home and took a formal recorded statement. The Acting Sergeant further provided his email address to her so that she could send him the photographs of her prior injuries. She did so and the Acting Sergeant uploaded the photographs to the DEMS system.

That same day, a complaint was filed with OPA concerning this incident. This investigation followed. The primary allegations in this case were that the Named Employees failed to thoroughly and completely investigate this domestic violence incident and that they acted unprofessionally with the Complainant when they questioned her mental health rather than investigating the domestic violence allegations.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

Performance of Duty - 15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)

SPD Policy 15.410-POL-2 directs that officers are required to make an arrest in a domestic violence incident where there is probable cause that the subject committed an assault or violated a court order within the past four hours. The policy further provides that arrests are otherwise discretionary. (SPD Policy 15.410-POL-2.)

Here, NE#1 asserted that he did not have probable cause to believe that an assault had occurred within the last four hours. Indeed, the Complainant did not allege that such a crime had occurred. She did contend that assaults had occurred on previous dates; however, the officers did not believe that they had sufficient evidence at that time to arrest her husband for those offenses. NE#1 expressed that their intent was to document this information and pass it on to a follow-up unit for further investigatory work.

I agree that there was not sufficient probable cause to arrest the husband at that time. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

Performance of Duty - 15.410 - Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect

SPD Policy 15.410-POL-3 states that "officers will make a reasonable effort to protect the victim and arrest the suspect." The policy sets forth the various tasks officers are required to complete when responding to a domestic violence incident. (See SPD Policy 15.410-POL-3.)



The first thing that an officer is required to determine when responding to an alleged domestic violence incident is whether or not domestic violence is actually at issue. Here, based on the definition of domestic violence set forth in the policy (which mirrors the statute) it is unclear whether this case was a domestic violence incident based on the allegations alleged by the Complainant concerning her husband returning to their home. However, given her allegations of prior abuse by her husband, the Named Employees should have treated this case as a domestic violence incident.

The officers did conduct a primary domestic violence investigation, which included interviewing both the Complainant and her husband. There were no other identified witnesses. The officers did not place the husband under arrest, as they did not believe there was probable cause to do so. As indicated above, I concur with this decision.

With regard to the other tasks outlined in this policy, the officers completed some, but not all. For example, NE#1 did not recall whether he explicitly told the Complainant that her husband could be arrested at a later date if required. Moreover, aside from asking about the firearm that was ultimately taken from the house, NE#1 did not recall whether he asked about any other potentially deadly weapons available to the husband. The officer did not facilitate transportation for the Complainant to a hospital or to a place of safety or shelter. NE#1 stated that he did not recall whether she reported being injured or requested medical attention and explained that the Complainant did not ask to be taken anywhere.

NE#1's rationale for not completing all of the items on the checklist in their entirety appears to be that he believed that the call was shifting from a domestic violence incident to a potential crisis incident. That being said, neither NE#1 or NE#2 completed a crisis template. This case was complicated, as I imagine most domestic violence cases are; however, based on the nature of the Complainant's allegations, including those of past abuse, this was, in my opinion a domestic violence incident that needed to be investigated as set forth in policy. Here, the investigation fell short. While this may be the case, I do not find that NE#1 intentionally sought to conduct a less than complete investigation and I believe that a sustained finding is unwarranted. Instead, I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should receive additional training concerning the Department's expectations for investigations into domestic violence incidents. Specifically, he should be retrained as to the requirements of SPD Policies 15.410 and 15.180. Lastly, NE#1 should receive training concerning the elements of SPD Policy 15.125, which he appeared to be unfamiliar with at his OPA interview. NE#1 should receive counseling from his chain of command concerning the importance to the Department of appropriately handling domestic violence incidents and the fact that this is a priority for the Department. This re-training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #3

Investigations and Reports - 15.410 - Domestic Violence Investigation 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence



SPD Policy 15.410-POL-5 reaffirms the Department's commitment to a thorough primary investigation of domestic violence incidents. In addition to the requirements set forth in SPD Policy 15.410-POL-3, this section of the policy also requires that officers: "attempt to obtain the domestic violence history of the involved suspect"; "complete the risk assessment"; and "use the sworn affirmation...when taking a statement from a victim or witness." (SPD Policy 15.410-POL-5.)

Here, the officers asserted that they attempted to obtain the domestic violence history of the husband. They spoke with the Complainant about the prior alleged abuse and ran her husband's name through their MDT system. NE#1 documented this information in the general offense report. NE#1 also contended that they spoke with the husband to learn similar information.

NE#1 also did complete the risk assessment form as required.

The officers did not take a formal statement from the Complainant using the sworn affirmation. I do not read this portion of the policy as explicitly compelling a statement. It simply states that when a statement is taken, the sworn affirmation will be used. However, this policy cross-references SPD Policy 15.180-POL-3, which affirmatively requires that victim statements be taken in all domestic violence investigations. As such, I infer that there was, in fact, a requirement that NE#1 take a formal statement from the Complainant using the sworn affirmation. While NE#1 did not do so, a statement was later taken by his supervisor, the Acting Sergeant. This should have been done by NE#1 instead.

As stated above, while I find that NE#1 did not satisfy all of the elements of this policy, I do not believe that NE#1 acted in bad faith or intentionally conducted an incomplete investigation. For this reason, I recommend that this allegation be Not Sustained – Training referral and refer to the training referral above. (See Named Employee #1, Allegation #2.)

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #4

Investigations and Reports - 15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence

Like SPD Policies 15.410-POL-3 and 15.410-POL-5, SPD Policy 15.410-TSK-1 sets forth the expectations for officers during the investigation of domestic violence incidents.

For the same reasons as stated above (see Named Employee #1, Allegations #2 and 3), I find that NE#1's investigation was incomplete and recommend that this allegation be Not Sustained – Training Referral. I refer to the training referral above. (See Named Employee #1, Allegation #2.)

Recommended Finding: **Not Sustained (Training Referral)**



Named Employee #1 - Allegation #5

Investigations and Reports - 15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

SPD Policy 15.180-POL-1 requires that, in primary investigations, officers conduct a thorough and complete search for evidence. The policy further requires officers to collect evidence and states that only evidence that it impractical to collect shall be retained by the owner. (SPD Policy 15.180-POL-1.) Such evidence should be photographed. (*Id.*)

Here, the Complainant related to the Named Employees that she had photographs of the prior injuries that she had suffered as a result of alleged domestic violence incidents. She even showed one of the photographs to NE#1. However, the officers did not ask for copies of these photographs, provide their email addresses so that the Complainant could electronically provide them, or even themselves take photographs of the evidence. Notably, the Acting Sergeant later obtained the photographs and uploaded them to the DEMS system. This task should have been performed by the Named Employees.

In explaining why they did not do so, NE#1 stated that his intention was to refer the case to a DV follow-up unit and he expected that they would collect the evidence. While I understand his reasoning, this was technically in violation of policy.

However, as with the technical violations of SPD Policies 15.410 and 15.180 outlined herein, I recommend a training referral rather than a sustained finding. I further refer to the training referral outlined above. (See Named Employee #1, Allegation #2.)

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #1 - Allegation #6

Investigations and Reports - 15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances

SPD Policy 15.180-POL-1 requires that officers shall take victim statements in all domestic violence investigations, and instructs that, where it is a felony investigation, witness statements are also mandatory.

As explained above (see Named Employee #1, Allegation #3), I find that NE#1 should have taken a formal statement from the Complainant using the sworn affirmation. However, I believe that a training referral, rather than a sustained finding, is warranted here. I refer to the training referral set forth above. (See Named Employee #1, Allegation #2.)

Recommended Finding: **Not Sustained (Training Referral)**



Named Employee #1 - Allegation #7

Professionalism - 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

SPD Policy 5.001-POL-9 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-9.)

The Complainant alleged that the Named Employees, and particularly NE#1, were unprofessional when they engaged in a discussion concerning her mental health instead of focusing on her allegations of domestic violence. She believed that the officers spent more time speaking with her husband and that they took her husband’s side and believed everything he said. Lastly, she alleged that the officers’ conduct caused her to suffer more anxiety and depression, instead of causing her to feel safe.

While I do not believe that the officers intentionally tried to minimize the Complainant’s claims of domestic violence, much of their conversation with her centered around her mental illness and current emotional state. I can see how the Complainant would have been upset by the fact that the officers were apparently more concerned with her mental health condition than her claims of repeated prior abuse. It appeared that they did deem the husband’s account to be more credible, even asking him about the Complainant’s mental condition. I find that the officers were genuinely concerned with her well-being, but also that the way they interacted with her caused her to feel worse instead of better. I further agree with the Complainant that the officers could have done a better job explaining why they could not force her husband to leave the home, why they wanted to take the gun, and why they deemed it necessary to discuss her mental health status and prior suicidal ideation, particularly given that she was clearly upset by these conversations.

Ultimately, I do not find that the Named Employees’ conduct rose to the level of a policy violation. However, I do think they would benefit from additional training concerning how to interact with domestic violence victims and people who are potentially in crisis.

- **Training Referral:** NE#1 should receive training from his chain of command or another appropriate entity concerning interactions with victims of domestic violence and individuals who are potentially in crisis. That training and any associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #1

Performance of Duty - 15.410 - Domestic Violence Investigation 2. Officers Make Arrests with Probable Cause (RCW 10.31.100)

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

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



Named Employee #2 - Allegation #2

Performance of Duty - 15.410 - Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect

Both Named Employees asserted that NE#1 was the primary officer on this call. As such, the course and scope of the investigation that was conducted was ultimately within his purview and was his responsibility. However, NE#2 was the more experienced officer and could have asserted himself to correct the deficiencies in NE#1's investigation and ensure that it was complete. He did not do so here.

As such, while a sustained finding is not warranted against NE#2 for the same reasons as with NE#1, I believe that NE#2 would benefit from the same training referral as recommended for NE#1.

- **Training Referral:** NE#2 should receive additional training concerning the Department's expectations for investigations into domestic violence incidents. Specifically, he should be retrained as to the requirements of SPD Policies 15.410 and 15.180. Lastly, NE#2 should receive training concerning the elements of SPD Policy 15.125, which he appeared to be unfamiliar with at his OPA interview. NE#2 should receive counseling from his chain of command concerning the importance to the Department of appropriately handling domestic violence incidents and the fact that this is a priority for the Department. This re-training and associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #3

Investigations and Reports - 15.410 - Domestic Violence Investigation 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence

For the same reasons as outlined above (see Named Employee #2, Allegation #2), I recommend that this allegation be Not Sustained – Training Referral and I refer to the training referral set forth in Allegation #2.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #4

Investigations and Reports - 15.410 - Domestic Violence Investigation 15.410-TSK-1 Patrol Officer Primary Investigation of a Domestic Violence

For the same reasons as outlined above (see Named Employee #2, Allegation #2), I recommend that this allegation be Not Sustained – Training Referral and I refer to the training referral set forth in Allegation #2.

Recommended Finding: **Not Sustained (Training Referral)**



Named Employee #2 - Allegation #5

Investigations and Reports - 15.180 - Primary Investigations 1. Officers Shall Conduct a Thorough and Complete Search for Evidence

For the same reasons as outlined above (see Named Employee #2, Allegation #2), I recommend that this allegation be Not Sustained – Training Referral and I refer to the training referral set forth in Allegation #2.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #6

Investigations and Reports - 15.180 - Primary Investigations 3. Officers Shall Take Statements in Certain Circumstances

For the same reasons as outlined above (see Named Employee #2, Allegation #2), I recommend that this allegation be Not Sustained – Training Referral and I refer to the training referral set forth in Allegation #2.

Recommended Finding: **Not Sustained (Training Referral)**

Named Employee #2 - Allegation #7

Professionalism - 5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times

For the same reasons as stated above (see Named Employee #1, Allegation #7), I recommend that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#2 should receive training from his chain of command or another appropriate entity concerning interactions with victims of domestic violence and individuals who are potentially in crisis. That training and any associated counseling should be memorialized in a PAS entry.

Recommended Finding: **Not Sustained (Training Referral)**