



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 8, 2018

CASE NUMBER: 2017OPA-1189

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)

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, the Office of Police Accountability, alleged that the Named Employee may have violated SPD policy during his OPA interviews in a related case by providing potentially false information inconsistent with documentation and In-Car Video of the incident.

STATEMENT OF FACTS:

By way of background, OPA investigated allegations that NE#1 and a Student Officer who was under his supervision: failed to conduct a comprehensive investigation of a potential domestic violence incident; generated reports as a result of their investigation that were not complete, thorough, or accurate; and did not make mandatory arrests. NE#1 was interviewed twice during the prior investigation, the second time to attempt to resolve inconsistencies that arose from his first interview. That case, which was investigated under case number 2017OPA-0568, resulted in multiple Sustained findings against NE#1 and several Training Referrals for the Student Officer.

There were two main areas of NE#1’s initial interview that were inconsistent with the objective evidence. First, in explaining why he and the Student Officer did not make the mandatory arrest of the subject in the underlying case for domestic violence, NE#1 told OPA that he did not know that the subject and the complainant were involved in a domestic relationship. He further stated that he did not realize this until he read the CAD Call Report, which referenced that the subject was the complainant’s “ex” just prior to his OPA interview.

With regard to the first inconsistency, the Student Officer was clear at his OPA interview that he was aware of the domestic relationship between the complainant and the subject. Moreover, the Daily Observation Report (DOR) that NE#1 generated to document and evaluate the Student Officer’s activities on this date stated the following: “You responded to the location without assistance. You met with the complainant and *she wanted you to invol her boyfriend*. You met with the subject and found that he did not meet the invol requirement. You cleared the call and flagged your ICV.” This established that NE#1 knew of the domestic relationship at the time he created the DOR, which was well before his OPA interview.

Second, in responding to questions concerning the thoroughness of the investigation that he and the Student Officer conducted, NE#1 told OPA that it was his expectation that the Student Officer was going to conduct further



investigation after the Student Officer informed the complainant that the subject was not going to be involuntarily committed. NE#1 stated that this further investigation did not occur because the complainant got upset and walked away.

With regard to the second inconsistency, the Student Officer told OPA that he did not remember having a discussion with NE#1 concerning conducting additional investigation after his conversation with the complainant. He further did not recall being “marked down” by NE#1 because of his unsatisfactory handling of this call, and stated that normally NE#1 would mark him down when he made a mistake. Notably, the DOR did not contain any critique of the Student Officer’s actions. The Student Officer also did not remember discussing with NE#1 a training technique where the FTO would allow a student to make a mistake and not intervene. He additionally did not recall any instance in which NE#1 asked him to re-contact a witness or victim because he had not conducted a complete investigation. Moreover, the In-Car Video (ICV) of the incident captured an interaction between NE#1 and the Student Officer that contradicted NE#1’s assertion that it was his understanding that the Student Officer was going to conduct further investigation. The ICV recorded the Student Officer telling NE#1: “so, I’m going to tell her and cut her loose, and tell him and cut him loose.” NE#1 responded by saying “all right.” There was no indication on the ICV of any discussion between NE#1 and the Student Officer concerning additional investigation being conducted.

When NE#1 was re-interviewed concerning the above inconsistencies, he either provided no explanation or an explanation that was implausible. NE#1 asserted that the language in the DOR was a typographic error that resulted from him cutting and pasting language from another DOR. First, it is troubling that NE#1, who was tasked with teaching and evaluating students, would not take the time to thoughtfully generate DORs for each occasion. Second, that explanation is simply not believable under the circumstances. Notably, this is not a case where one word was out of place, the facts written by NE#1 in the DOR exactly described the scenario faced by the officers during this incident. NE#1 had no explanation for the discrepancy between his first interview and the ICV reflecting his conversation with the Student Officer. He reiterated that his intent was that the Student Officer would conduct more investigation after speaking with the complainant. NE#1 stated that even where a Student Officer thinks he might be done with an investigation, there still may be more work that needs to be done.

Based on the discrepancies and NE#1’s responses or lack of responses, OPA initiated this investigation to determine whether NE#1 engaged in dishonesty during his OPA interviews.

As part of this investigation, OPA reviewed the 2017 FTO Override Training that was taken by NE#1. The module instructed officers to override a student officer “when the student officers is about to violate the law or an SPD policy.” OPA also interviewed NE#1 for a third time and re-interviewed the Student Officer.

At this third interview, NE#1 stated that he completed the DOR two days after the incident. He stated that he mostly went off memory but re-reviewed the ICV. He told OPA that at no point on the ICV did the complainant state that she was in a domestic relationship with the subject. He indicated that he “missed the ex part” in the CAD In response to OPA’s questioning, NE#1 stated that he was not dishonest in his prior interviews and in the documentation that he generated. He further reiterated that, regardless of the conversation documented on the ICV, his expectation was that the Student Officer was going to conduct further investigation. He also stated that he did not tell the Student Officer to do so because he was trained as a FTO to allow the student to first make a mistake and to then correct the mistake. OPA raised NE#1’s training with him and, specifically, the portion of the training that indicated that an override should occur before the student engaged in a policy violation. He said that it was his “best judgment” not to override the



Student Officer. NE#1 was told by OPA that the ICV of the incident, which recorded three minutes after the complainant walked away, did not capture any debrief of the incident. NE#1 stated that the debrief occurred sometime thereafter and off camera. He was further informed that the DOR for that date did not contain any markdown for the Student Officer's failure to conduct the additional investigation that NE#1 said that he expected. NE#1 explained that not everything discussed in the debrief was memorialized in the DAR. NE#1 ultimately stated that he did not remember of any debrief conversation he had with the Student Officer.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication

SPD Policy 5.001-POL-10 requires that Department employees be truthful and complete in all communications. This complaint was initiated by OPA based on potential material dishonesty engaged in by NE#1 during his interviews

After the conclusion of this investigation, however, OPA is no closer to a resolution of this question. Notably, and as discussed in detail above, NE#1 provided the same unsupported and unbelievable answers at his OPA interview in this case that he did at his interviews in the prior case. It is simply not plausible that NE#1 made a cut and paste error in his DOR. Moreover, based on the ICV, the DOR, and the Student Officer's OPA interviews, I do not credit NE#1's account that he ever expected or discussed with the Student Officer that further investigation would be conducted.

Were the standard of proof for dishonesty a preponderance of the evidence, I would recommend without hesitation that this allegation be sustained. However, when evaluating dishonesty, a higher quantum of proof applies and I do not believe that the evidence in the record meets this evidentiary burden. This should not be construed to mean that I believe that NE#1 was not inaccurate and misleading concerning material facts or that I find his accounts to be credible; indeed, I expressly do not believe that. Instead, I simply do not find that it can be proved that NE#1 violated this policy.

I note that, at his third OPA interview, NE#1 stated his belief that this investigation was "unnecessary." It was unnecessary, but NE#1 is at fault for that and for wasting both his time and OPA's limited resources with this case. It was his inaccuracies, misstatements, and investigatory and supervisory shortcomings that set this case down this path. NE#1 should be frustrated with himself and his own conduct, not with OPA.

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