



## **CLOSED CASE SUMMARY**

ISSUED DATE: MARCH 12, 2019

CASE NUMBER: 2018OPA-0925

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

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 Complainant alleged that the Named Employee was dishonest when she claimed in her police report that an individual she interviewed declined to be audio recorded. The Complainant further alleged that the reason the Named Employee discouraged the same interviewee from agreeing to be audio recorded was to limit information available for public disclosure.

### **ADMINISTRATIVE NOTE:**

The Complainant contacted OPA after it completed this investigation and stated that she now believes the individual that Named Employee #1 (NE#1) interviewed, who is referred to here as Witness Officer #1 (WO#1), cannot be trusted. While OPA considered the Complainant’s assertion concerning WO#1’s credibility, it was ultimately irrelevant to OPA’s determinations.

OPA initially found unprofessional NE#1’s statements to WO#1 concerning that his interview would be a public record that would likely be requested by the Complainant. OPA reached this conclusion because OPA felt that these statements were purposed to convince him not to consent to the recording, which, in effect, undermined the transparency and perceived fairness of the investigation. At the discipline meeting in this matter, NE#1’s chain of command asserted that it did not believe that NE#1’s statements constituted unprofessional conduct in violation of policy. They asserted that she acted according to their expectations and that her statements to WO#1 were appropriate.

OPA still believes that NE#1’s statements were ill-advised. Had NE#1 simply told WO#1 that his interview would be a public record, that would certainly have been permissible. However, the extra information she provided concerning her belief that the Complainant would request the interview was unnecessary and, even if not intentionally purposed to keep the interview from the public eye, functionally served that purpose. OPA finds this to have been problematic, particularly given the high-profile nature of the investigation. However, OPA cannot find that NE#1



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violated policy when her chain of command asserts that she did exactly what they expected her to do. That being said, OPA recommends that the chain of command provide unit-wide training to ensure that such statements are not made during interviews in the future.

**SUMMARY OF INVESTIGATION:**

The Complainant alleged that Named Employee #1 (NE#1) may have been dishonest in prior SPD reports when she claimed that WO#1, who was a Deputy employed by the King County Sheriff's Office (KCSO), declined to have his interview audio recorded, when in fact he had not done so. The Complainant also alleged that NE#1 discouraged WO#1 from agreeing to have the interview audio recorded to limit the amount of material that the Complainant could obtain through a public disclosure request. As evidence, the Complainant provided OPA with a recording of an interview that was conducted of WO#1 by the KCSO where WO#1 was asked questions about what took place during his interview with NE#1. The Complainant obtained a copy of that recording through a public disclosure request to the KCSO.

OPA reviewed the recording provided by the Complainant. In that recording, the outside agency provided WO#1 with a written summary of his interview with NE#1 and asked whether he believed it was an accurate summary of what took place during that interview. After reading through it, WO#1 stated: "Well, first of all I didn't decline to have it recorded. [NE#1] said she didn't want it recorded so it wouldn't be as much public record on it." WO#1 also stated that he recalled that NE#1 took notes during the interview.

OPA obtained and reviewed NE#1 official summary of her interview of WO#1 and her handwritten notes. The first sentence of her summary reads: "[WO#1] declined to have this interview recorded." That introductory sentence was followed by: "This is a summation of the interview and is not verbatim." OPA found nothing in its review of NE#1's handwritten notes explaining the decision not to record the interview. In general, the notes reflected what was included in NE#1's official summary of WO#1's interview.

OPA interviewed WO#1, who confirmed that he did not decline to have his interview with NE#1 recorded. He added that, based on the discussion he had with NE#1 in advance of their interview, "it was decided that it wouldn't be recorded for public disclosure reasons." WO#1 later stated that NE#1 suggested that they not record the interview, but he was unable to recall why there was a concern about public disclosure. WO#1 confirmed that NE#1 did not unilaterally determine that the interview was not going to be recorded. WO#1 also told OPA that he did not think there was anything unusual about recording or, for that matter, not recording an interview, and that he had experienced both.

OPA interviewed NE#1. NE#1 confirmed that she interviewed WO#1 and that he declined to have his interview recorded. NE#1 told OPA that WO#1 did not explain why he declined. NE#1 stated that she had nothing to gain by not recording the interview. NE#1 also confirmed that she was not directed or ordered not to record her interview with WO#1 by anyone. OPA played the audio recording of WO#1's interview with the outside agency for NE#1. OPA asked NE#1 follow up questions about why WO#1 would claim that he did not decline to audio record his interview with NE#1. NE#1 stated that she did not think that WO#1's claim was accurate. NE#1 stated that, prior to their interview, NE#1 asked WO#1 if he would like the interview recorded and that it would be subject to public disclosure. NE#1 also informed WO#1 that: "[the Complainant] would might-most [sic] likely ask for it." NE#1 stated that WO#1 responded by declining to have his interview recorded.



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OPA requested email communications between a SPD supervisor identified by the Complainant and a prominent figure at the KCSO, where the Complainant had filed multiple complaints. OPA found nothing in those emails that reference the Complainant or any of her complaints involving the outside agency.

**ANALYSIS AND CONCLUSIONS:**

**Named Employee #1 - Allegations #1**

***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.

WO#1 and NE#1 confirmed that there was a discussion just prior to the start of their interview about whether it would be recorded and that this discussion was led by NE#1. They also confirmed that the discussion was about how the decision to record would impact information that would be available for public disclosure. However, they differed in their view of who made the final decision that the interview would not be recorded. NE#1 maintained, essentially, that the decision was left to the interviewee, and that WO#1 ultimately decided not to have the interview recorded. WO#1 disputed that characterization and pointed to the fact that NE#1 made the arguments she did concerning the possibility of public disclosure and the Complainant later seeking the recording, and all he did was listen to her reasons as to why recording was not a good idea. Though OPA has concerns about why NE#1 did anything more than to ask whether WO#1 granted NE#1 permission to record their interview (which will specifically be addressed in the context of Allegation #3), it does not find that the evidence supports the allegation that NE#1's actions violated the law.

As such, I recommend that this allegation be Not Sustained – Unfounded.

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

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

***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

OPA does not find that the evidence supports that NE#1 was untruthful or incomplete in her summary of WO#1's interview when she wrote that WO#1 declined to have the interview audio recorded. OPA finds that it is entirely plausible that the two parties could have two perspectives about who made the final decision not to record the interview without either party being factually incorrect or, for that matter, dishonest. In this instance, NE#1 believed that WO#1 decided against recording the interview after she provided him with information about how recording might impact materials available for public disclosure, but she told OPA that the final decision was the interviewee's. Moreover, WO#1 did, in fact, decline to have the interview recorded.

For these reasons, I recommend that this allegation be Not Sustained – Unfounded.

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



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**Named Employee #1 - Allegation #3**

***5.001 - Standards and Duties 10. Employees Shall Strive to be Professional***

SPD Policy 5.001-POL-10 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-10.)

At her OPA interview, NE#1 stated that WO#1 wanted the interview not to be recorded. When asked whether she knew why he made that decision, she stated that she believed that it was because he was still friends with the Complainant and because he was still working for the KSCO. At her OPA interview, NE#1 was played the audio recording of an interview conducted of WO#1 by internal affairs for the KCSO. WO#1 stated during that interview that NE#1, herself, made the decision not to record due to public disclosure concerns. NE#1 denied that this was accurate; however, she acknowledged that she did tell WO#1 that if he consented to recording, the recording would be subject to public disclosure and that the Complainant “had already asked for every other item that [she] had at the time.” NE#1 reported that WO#1 thereafter declined to have the statement recorded.

As discussed above, OPA believes that NE#1’s advisement functionally resulted in causing WO#1 to not consent to the recording. Even if not NE#1’s intention, this was problematic. OPA believes that where such statements result in presumptively public interviews being shielded from the community, it undermines confidence in the Department and its investigators. This is especially the case in high-profile matters such as the investigation at issue here.

OPA ultimately disagrees with the chain of command that such statements are appropriate. As such, OPA issues the below Training Referral.

- **Training Referral:** NE#1’s chain of command should reconsider permitting its investigators to use advisements such as that provided by NE#1 to WO#1. The chain of command should train its investigators that, while it is appropriate to inform a witness that an interview may later be publicly available, they should refrain from advising witnesses as to whether they should consent to a recording.

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