



## CLOSED CASE SUMMARY

ISSUED DATE: MAY 12, 2019

CASE NUMBER: 2018OPA-1075

### Allegations of Misconduct & Director’s Findings

**Named Employee #1**

Allegation(s):		Director’s Findings
# 1	15.180 – Primary Investigation 3. Officers Shall Take Statements in Certain Circumstances	Not Sustained (Training Referral)
# 2	12.080 Department Records Access, Inspection and Dissemination 4. Officers / Detectives Must Ask Victims, Witnesses and Complainants if They Want Their Identifying Information Disclosed or Not Disclosed	Not Sustained (Training Referral)
# 3	16.090 Recording with ICV and BWV – 5a Notification of Recording	Not Sustained (Training Referral)
# 4	15.410 – Domestic Violence Investigation 3. Officers Will Make a Reasonable Effort to Protect the Victim and Arrest the Suspect	Not Sustained (Training Referral)
# 5	15.410 – Domestic Violence Investigation 5. The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents	Not Sustained (Training Referral)
# 6	15.180 – Primary Investigation 5. Officers Shall Document all Primary Investigations on a General Offense Report	Not Sustained (Lawful and Proper)
# 7	5.001 – Standards and Duties 18. Employees Must Avoid Conflicts of Interest	Not Sustained (Unfounded)
# 8	5.001 – Standards and Duties 11. Employees Shall be Truthful and Complete in All Communication	Not Sustained (Unfounded)

**Named Employee #2**

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

### EXECUTIVE SUMMARY:

It was alleged that Named Employee #1 violated a number of policies relating to his investigation of a domestic violence incident. It was further alleged that an unknown SPD employee may have made an inappropriate and unprofessional statement concerning the Complainant.

### STATEMENT OF FACTS:

The Complainant initiated this complaint with OPA in which she alleged that Named Employee #1 (NE#1) engaged in various misconduct in connection with his investigation of a domestic violence (DV) incident. The Complainant and her ex-husband were the involved parties to that incident. Specifically, the Complainant alleged that NE#1 failed to complete a supplemental DV report, did not perform all of the steps required as part of a DV investigation, and did not inform her of the option of marking “do not disclose” on the reporting for this incident so as to prevent her



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personal information from being publicly available. The Complainant also stated that NE#1's reports concerning this incident were inaccurate. The Complainant further contended that NE#1 recorded a phone conversation between them on his In-Car Video (ICV) and that he did not inform her that he was doing so and get her consent prior to recording. In addition, the Complainant asserted that NE#1 lied to her during a phone conversation. Lastly, the Complainant told OPA that NE#1 appeared at hearings between her and her ex-husband and did so on behalf of the ex-husband and without being subpoenaed. It was alleged that this suggested a possible personal relationship between the ex-husband and NE#1 and constituted a potential conflict of interest. The Complainant identified that, during her review of ICV of this incident, she heard an officer say, apparently referring to her and her ex-husband, "fuck them." She believed that this statement was unprofessional.

As part of its investigation, OPA interviewed the Complainant. OPA further interviewed NE#1 and two other witness officers. OPA also reviewed ICV, various reports concerning to this and other related incidents, emails from the Complainant, court orders and relating records, and an anonymous dossier detailing various information.

### **ANALYSIS AND CONCLUSIONS:**

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

##### ***15.180 – Primary Investigation 3. Officers Shall Take Statements in Certain Circumstances***

SPD Policy 15.180-POL-3 directs officers as to when they are required to take statements as part of primary investigations. Relevant to this case, the policy states that: "Officers shall take victim statements in all domestic violence investigations." (SPD Policy 15.180-POL-3.)

Here, NE#1 did not take a victim statement from the Complainant. He told OPA that, during this incident, he was investigating the violation of a DV order. He stated that, in doing so, he relied on the provisions of SPD Policy 15.400. He contended that, under that policy, there was no explicit requirement that he obtain a statement from the victim. As such, he believed that his failure to take a statement from the Complainant was not contrary to policy.

While NE#1 is right that SPD Policy 15.400 does not require a victim statement, he overlooks the plain language of SPD Policy 15.410. That policy broadly defines what constitutes a DV investigation and includes within that definition an investigation into the violation of a DV order. As such, NE#1 was, by definition, conducting a DV investigation and was thus bound by SPD Policy 15.180-POL-3 to take a statement from the Complainant. When he failed to do so, he acted contrary to policy.

The above being said, I understand NE#1's confusion with the policies discussed above. I find that NE#1's failure to take a statement from the Complainant was borne out of that confusion, not out of an intent to commit misconduct. As such, I recommend that NE#1 receive the below Training Referral rather than a Sustained finding.

- **Training Referral:** NE#1 should be reminded that the investigation of a DV order violation falls within the definition of a DV assault under SPD Policy 15.410 and, as such, he was required to perform the investigatory requirements of that policy in this case. His chain of command should instruct him that the failure to do so was contrary to policy and should encourage him to more closely comply with this policy in the future. This counseling and any associated retraining should be documented and this documentation should be maintained in an appropriate database.



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

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

***12.080 Department Records Access, Inspection and Dissemination 4. Officers / Detectives Must Ask Victims, Witnesses and Complainants if They Want Their Identifying Information Disclosed or Not Disclosed***

SPD Policy 12.080-POL-4 requires that officers ask victims if they want their identifying information disclosed or not disclosed. Here, based on OPA's review of ICV, it is clear that NE#1 failed to ask the Complainant whether she wanted her information to be disclosed. Moreover, he did not mark "do not disclose" on the General Offense Report that he generated. At his OPA interview, NE#1 stated that he did not recall whether he asked this question of the Complainant but explained that it was his normal practice. However, as indicated above, he did not do so here.

While the failure to ask this question of the Complainant represented a violation of policy, I find that this is minor misconduct for which training rather than discipline is the more appropriate outcome. As such, I recommend that this allegation be Not Sustained and issue NE#1 the below Training Referral.

- **Training Referral:** NE#1 should be retrained as to the requirements of SPD Policy 12.080-POL-4 and should be reminded of the Department's expectation that he asks victims in all cases whether they want their identifying information to be disclosed. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.

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

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

***16.090 Recording with ICV and BWV – 5a Notification of Recording***

SPD Policy 16.090-POL-1(5)(a) requires the following: "Employees will notify persons that they are being recorded as soon as practical, and the notification will be on the recording."

The Complainant alleged that NE#1 failed to provide this notification to her on two occasions. OPA's investigation revealed that the Complainant did, in fact, receive a notification on the first occasion. However, OPA determined that NE#1 failed to notify the Complainant that she was being recorded on the second occasion when she called him and he put their call on speaker, causing it to be captured on ICV.

When NE#1 did not provide the required notification and then recorded the Complainant without her knowing or consenting, he violated SPD policy. That being said, I find that this is minor misconduct for which training rather than discipline is the more appropriate outcome. As such, I recommend that this allegation be Not Sustained and issue NE#1 the below Training Referral.

- **Training Referral:** NE#1 should be retrained as to the requirements of SPD Policy 16.090-POL-1(5)(a) and should be reminded of SPD's expectation that he notify individuals that they are being recorded prior to capturing them on Department video. This retraining and associated counseling should be documented and this documentation should be maintained in an appropriate database.



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

**Named Employee #1 - Allegations #4**

***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 requires that officers make a reasonable effort to protect the victim and arrest the suspect. The policy provides direction to officers on how to do so and this includes, but is not limited to: notifying the victim that the suspect may be arrested at a later time even if suspect has left the scene prior to officers' arrival; documenting the incident appropriately; advising the victim of resources to prevent further abuse, such as shelters and/or other services; providing the victim with the SPD DV Resource Guide; explaining to the victim how to seek an order of protection; asking the victim whether there are firearms or other deadly weapons accessible to the suspect; and, where applicable, facilitating transportation for the victim to a hospital for treatment or to a place of safety or shelter. (SPD Policy 15.410-POL-3.) The policy also instructs that the responding officers will conduct a thorough and complete primary investigation, as well as that they will fully and accurately document the incident. (*Id.*)

As a general matter, I find that NE#1 and other officers thoroughly evaluated this incident while on the scene, including conducting an interview of the Complainant and reviewing relevant materials that she provided to them. Moreover, based on OPA's review of the video, NE#1 and other officers stood by for an extended amount of time to keep the peace at the Complainant's residence and, in doing so, ensured that the Complainant remained safe.

However, NE#1 did not complete a number of the tasks itemized in this policy, including not providing the Complainant with a DV Resource Guide, not informing her of shelters and other safe spaces, and not asking about whether there were firearms available to her ex-husband.

When explaining why he did not perform these tasks, NE#1 again cited to the fact that he believed that his conduct was governed by SPD Policy 15.400 not SPD Policy 15.410. As discussed in the context of Allegation #1, NE#1's interpretation of these policies is too narrow. Even though he was investigating the possible violation of a DV order, NE#1 was, by policy, functionally engaged in a DV assault investigation and was required to satisfy the requirements of that investigation set forth under SPD Policy 15.410. When he did not do so, he acted contrary to policy. However, for the same reasons as articulated in the context of Allegation #1, I recommend that this allegation be Not Sustained. I further refer to the above Training Referral. (*See Named Employee #1, Allegation #1.*)

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

**Named Employee #1 - Allegation #5**

***15.180 – Primary Investigation 5. Officers Shall Document all Primary Investigations on a General Offense Report***

SPD Policy 15.410-POL-5 states that the Department is committed to a thorough primary investigation of DV incidents. The policy provides guidance as to what constitutes a thorough primary investigation and, in doing so, references SPD Policy 15.180 and other sections of SPD Policy 15.410. Most notably, this policy requires that the investigating officer complete a DV supplement and to use the Sworn Affirmation when taking a statement from the victim. (SPD Policy 15.410-POL-5.)



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As with both Allegation #1 and Allegation #5, NE#1 stated that he was not required to comply with the terms of this policy because he was investigating a DV order violation and was bound, instead, by SPD Policy 15.400. As discussed throughout this DCM, NE#1 is incorrect and he was required to comply with SPD Policy 15.410 as well. However, and for the same reasons as stated herein, I recommend that this allegation be Not Sustained, and I refer to the above Training Referral. (See Named Employee #1, Allegation #1.)

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

**Named Employee #1 - Allegation #6**

***15.180 – Primary Investigation 5. Officers Shall Document all Primary Investigations on a General Offense Report***

As discussed above, the Complainant alleged that the reporting generated by NE#1 was inaccurate.

SPD Policy 15.180-POL-5 states that officers are required to document all primary investigations on a General Offense Report. The policy further requires that all reports be “complete, thorough and accurate.” (SPD Policy 15.180-POL-5.)

Based on OPA’s review of the evidence in the record, including the ICV, there is no indication that any of the reports that were written concerning the Complainant were inaccurate. Indeed, the reports appear to have properly documented this incident and are largely consistent with the ICV.

As such, I recommend that this allegation be Not Sustained – Lawful and Proper as against NE#1.

Recommended Finding: **Not Sustained (Lawful and Proper)**

**Named Employee #1 - Allegations #7**

***5.001 – Standards and Duties 18. Employees Must Avoid Conflicts of Interest***

The Complainant contended that NE#1 had a personal relationship with her ex-husband and was colluding with him. She stated that NE#1 appeared at court hearings between herself and her ex-husband without being subpoenaed and in order to act as a witness against her. The Complainant asserted that, given NE#1’s purported relationship with her ex-husband, he may have been engaging in a conflict of interest by appearing in court in his professional capacity on behalf of her ex-husband.

SPD Policy 5.001-POL-18 requires that Department employees avoid conflicts of interest. In this regard, the policy specifically provides the following: “Employees will not engage in enforcement, investigative, or administrative functions that create or give the appearance of conflicts of interest”; and “Employees will not investigate events where they are involved. This also applies where any person with whom the employee has a personal relationship is involved in the event.” (SPD Policy 5.001-POL-18.)

At his OPA interview, NE#1 denied that he had any personal relationship with the ex-husband. A review of NE#1’s social media did not reveal any connections between himself and the ex-husband. In addition, both of the witness officers said that they did not know NE#1 to have any relationship with the ex-husband. NE#1 acknowledged that he



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was in court twice for proceedings involving the Complainant and her ex-husband; however, he stated that he was subpoenaed to appear both times.

Based on the above, there is no evidence supporting a finding that NE#1 had a personal relationship with the ex-husband or, for that matter, that he engaged in a conflict of interest. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

**Named Employee #1 - Allegation #8**

***5.001 – Standards and Duties 11. Employees Shall be Truthful and Complete in All Communication***

The Complainant asserted that NE#1 lied to her during a phone conversation when he told her that he had not been in contact with her ex-husband. SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications. If NE#1 did, in fact, purposefully lie to the Complainant, he may have acted contrary to this policy.

During the conversation in question, the Complainant asked NE#1 whether he had contact with her ex-husband. NE#1 responded: “That night? No. I didn’t even see your daughter get dropped off...” This statement appears to have been accurate. First, there is no evidence supporting a finding that NE#1 did, in fact, see the ex-husband that evening. Second, one of the witness officers confirmed that NE#1 did not.

It may be the case that NE#1 intentionally did not answer the exact question posed by the Complainant. However, he was not required by law or policy to do so. With regard to his specific statement to her, the evidence does not support a finding that it was dishonest. As such, I recommend that this allegation be Not Sustained – Unfounded.

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

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

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

The Complainant alleged that she reviewed ICV relating to this incident and that she heard an officer state: “fuck them.” The Complainant believed that this statement was directed, at least in part, towards her.

From OPA’s review the ICV, OPA was able to determine that this statement was, in fact, made. When asked about the statement, NE#1 stated that it was hard to hear on ICV. He contended that the statement was made as the officers were approaching the house, not after their interaction with the Complainant. He said that he could not tell what the context of the statement was. He further contended that he could not tell who said it and that he did not recall making that statement. From a review of the interview transcripts, the assigned OPA investigator did not ask either of the witness officers whether they made the statement in question.

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.) The policy further states the following: “Any time employees represent



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the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.” (*Id.*)

Had an officer said “fuck you” when referring to the Complainant, it could have constituted a violation of this policy. However, OPA’s investigation adduced insufficient information to determine which officer made the statement and what the purpose and/or context of that statement was. Without more, OPA cannot make a determinative finding as to his allegation. As such, I recommend that this allegation be Not Sustained – Inconclusive.

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