



CLOSED CASE SUMMARY

ISSUED DATE: JULY 6, 2019

CASE NUMBER: 2019OPA-0033

Allegations of Misconduct & Director’s Findings

Named Employee #1

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director’s Findings
# 1	5.001 - Standards and Duties 14. Retaliation is prohibited	Not Sustained (Unfounded)

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 Employees retaliated against him by naming him in several OPA complaints.

SUMMARY OF INVESTIGATION:

A. Complainant’s Allegations

The Complainant was interviewed as part of an EEO investigation. During that interview, he described how he suffered an injury while working the May Day demonstration on May 1, 2016. In the aftermath of being injured, the Complainant made a public records request to the Department for the CAD Call Log for May 1. He said that, shortly after returning to work, Named Employee #1 (NE#1) made an OPA referral against him concerning his failure to report misconduct. Specifically, it was alleged the Complainant received an email from a retired officer that may have contained racially insensitive language and that he did not report that language to OPA. NE#1 learned of this email when it was uncovered during the review of documents responsive to a public records request. On June 23, 2016, the Complainant filed a lawsuit against the Department based on the injuries he received on May 1. He stated that, shortly after he filed the lawsuit, he was named in EEO and OPA complaints relating to the conduct of another officer. The OPA complaint concerned his failure to report the conduct of the other officer. Both of those complaints were filed by Named Employee #2 (NE#2). He later learned (in or around October of 2018) that the OPA complaint against him was not sustained and he received a Training Referral.

The Complainant further stated that, in 2017, he was working on the Taser re-certification training. At that time, the Complainant was the Department’s Taser coordinator. Due to budget concerns, the decision was made with the Training Unit’s chain of command to change the re-certification to an e-learning. The Complainant told the EEO Sergeant that, after this decision was made, his Lieutenant told him that NE#2 was intending to file an OPA



complaint against him. The Complainant contended that the Lieutenant told the Complainant that he convinced NE#2 not to do so. No complaint was filed.

In November of 2018, the Complainant was counseled by another Training Unit Lieutenant concerning the issues raised in the OPA complaint. The Complainant asserted that no one else in the unit received the training and that he felt that he was unfairly targeted.

Lastly, also in November of 2018, the Complainant recounted that he was teaching a Taser course when he heard a female Sergeant make what he believed to be an inappropriate statement. The Training Unit Lieutenant who counseled him concerning the OPA matter also overheard the statement but took no action. The Complainant contended that this demonstrated disparate treatment within the unit and he stated that it confirmed his belief that he was being targeted by members of the Department.

B. OPA's Investigation

During its investigation, OPA interviewed the Complainant. The Complainant reiterated the complaint he made to the EEO Sergeant. He clarified to OPA that he believed that, in addition to the potential OPA complaint relating to his failure to complete the Taser re-certification, the Department retaliated against him in two other respects: first, even though he was the Taser expert for the Department, he was no longer asked to provide his analysis during Force Review Board (FRB) proceedings; and, second, he sought a job in the Intelligence Unit and did not get the position even though he completed a 30-day trial and no one else got the role as far as he knows.

OPA also interviewed the Named Employees and the Complainant's Lieutenant. The Lieutenant stated that he was unaware of the substance of the Complainant's lawsuit, as well as of the issues concerning the Complainant's failure to report misconduct by the other Training Unit employee. The Lieutenant recalled that the Complainant, who was the Taser instructor, did not complete the last quarter or so of the Taser re-certification. The Lieutenant stated that he understood that this was based on the Complainant's belief that the program was not going to continue because of budgetary reasons. The Lieutenant stated that he was not aware of anyone, including NE#2, who was seeking to file an OPA complaint against the Complainant for failing to complete this training.

NE#1 told OPA that, during the review of documents responsive to a public records request, an email was flagged for her consideration. As NE#1 described, the flagging of a document during a review of information responsive to a PDR request was not an uncommon occurrence. The email in question contained potentially unprofessional and racially insensitive comments. The email was sent to the Complainant by a retired officer. The Complainant, himself, did not make any statements that could be construed as violating policy. The primary substance of the email sent by the retired officer was the following:

You hear about the officer shooting the black male who attacked him with a flag pole? Do we have anti-flag pole training? I think maybe we should have officers trained with Samurai training swords so we can defend ourselves against the flag pole attackers as long as they are white of course. I guess Martin Luther King's eternal words of wisdom mean nothing to the press or politicians and especially those screaming of racism. These fools still talk of different races. I hope we are invaded by aliens from space so we can finally decide that we are the human race.



NE#1 stated that, because the Complainant did not report the potentially unprofessional comments set forth in the email, she referred that matter to OPA. NE#1 denied that the referral was purposed, in any respect, to retaliate against the Complainant. NE#1 indicated that she did not run this matter past NE#2. This complaint was ultimately closed by OPA a Contact Log with no adverse finding or disciplinary action taken against the Complainant. Notably, in an email sent to NE#1 by OPA informing her of the Contact Log classification decision, NE#1 responded: "Thank you. I think that is appropriate." NE#1 told OPA that she had no ill-will against the Complainant. NE#1 recounted that, during the mediation of his lawsuit against the Department, NE#1 spoke with the Complainant and told him that he was thought of highly by command staff. NE#1 recalled that, on a later occasion, the Complainant thanked her for her statement. NE#1 lastly stated that she was unaware of any of the other OPA referrals made concerning the Complainant by NE#2. NE#2 told OPA that she did not recall NE#1 making her aware of the email exchange that NE#1 referred to OPA. NE#2 confirmed that she made an OPA referral based on the Complainant's alleged failure to report misconduct engaged in by another Training Unit employee. NE#2 stated that a number of other Training Unit employees were called as witnesses and that two Training Unit supervisors were also named in OPA complaints relating to the same general incidents. She stated that this referral was not made to retaliate against the Complainant. NE#2 stated that she recalled discussing the Complainant's failure to complete the Taser re-certification training. She stated that there may have been a discussion concerning whether the Complainant's failure to do so was intentional or a mistake. However, NE#2 said that she did not have an intent to file an OPA complaint against the Complainant. NE#2 denied ever engaging in retaliation against the Complainant for any reason, including based on his filing of a lawsuit against the Department. With regard to the lawsuit, NE#2 asserted that it was the Complainant's right to proceed in that fashion and that this did not impact her decision-making or actions.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 14. Retaliation is prohibited

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, "oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy" or "who otherwise engages in lawful behavior." (*Id.*) Retaliatory acts are defined broadly under SPD's policy and include "discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

Based on OPA's investigation, there is insufficient evidence in the record to establish that either NE#1 or NE#2 retaliated against the Complainant.

With regard to the email exchange that was referred to OPA by NE#1, the email did include language that was potentially unprofessional and had racial undertones. While the Complainant was only a recipient of the email, he still arguably had a responsibility to report its content. As such, NE#1 acted consistent with her responsibility as a mandatory reporter when she referred this matter to OPA and it cannot be demonstrated that this was retaliatory. Similarly, NE#2's OPA referral concerning the Complainant's purported failure to report misconduct was also supported by policy. Again, there is no evidence that this was, instead, retaliatory. Moreover, the Complainant was, in fact, the primary subject of the training he received in November 2018. Indeed, this was done consistent with the



training referral that was issued to his chain of command by OPA as a result of the findings in 2016OPA-1035. As such, this was not retaliatory action.

The other allegations of retaliation made by the Complainant simply do not rise to that level. Both the Complainant's Lieutenant and NE#2 denied that there was ever an intent to file an OPA complaint against the Complainant for failing to complete the Taser re-certification course. Further, there is no evidence in the record to establish that the Complainant is no longer called as an expert at the FRB based on retaliation. Indeed, it could simply be the case that such testimony has simply been unnecessary in recent proceedings. In addition, while perhaps the comment described by the Complainant that occurred in the Taser training should have been reported to OPA, that it was not does not, in and of itself, indicate a double standard or disparate treatment. However, to the extent this is emblematic of a larger trend of incidents that the Complainant is aware of, OPA encourages the Complainant to provide that full information to OPA. He did not do so during this investigation. Lastly, there is no evidence available to OPA that suggests that the Complainant did not get the position he sought in the Intelligence Unit because of retaliation. Again, if the Complainant has more information concerning this specific issue, he should feel free to provide that information to OPA.

Ultimately, for the reasons stated above, the evidence does not support findings that NE#1 and NE#2 retaliated against the Complainant. As such, I recommend that this allegation be Not Sustained – Unfounded as against both Named Employees.

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

Named Employee #2 - Allegations #1

5.001 - Standards and Duties 14. Retaliation is prohibited

For the same reasons as stated above (see Named Employee #1, Allegation #1), I recommend that this allegation be Not Sustained – Unfounded as against NE#2.

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