



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 31, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2017OPA-0818

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 13. Retaliation is prohibited	Not Sustained (Unfounded)
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 3. Employees Shall Not Discourage, Interfere With, Hinder, or Obstruct Any Person from Filing	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 10. Employees Shall Be Truthful and Complete In All Communication	Not Sustained (Inconclusive)
# 4	5.001 - Standards and Duties 9. Employees Shall Strive to be Professional at all Times	Sustained
Imposed Discipline		
No Discipline		

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 retaliated against other SPD employees and tried to discourage them from participating in an adverse action against her. It was further alleged that the Named Employee may have engaged in dishonesty.

ADMINISTRATIVE NOTE:

The Named Employee is a civilian employee of the Department and is not a member of either SPOG or SPMA. As such, the 180-day deadline set forth in those contracts is inapplicable to her. However, and for administrative purposes, the 180-day deadline has been set as the date of this DCM.

ANALYSIS AND CONCLUSIONS:

On August 9, 2017, the Complainant initiated a complaint with OPA. The Complainant stated that he had been retained as an attorney by a former SPD civilian employee who was the plaintiff in a lawsuit alleging harassment by one of her co-workers. The Complainant stated that the co-worker in question – Named Employee #1 (NE#1) – was questioning other SPD employees regarding whether they had been contacted by him pursuant to his client's lawsuit. The Complainant alleged that NE#1 was questioning people about a purported "witness list," even though the only document the Complainant had submitted to SPD was a Public Disclosure Request (PDR). The Complainant



alleged that NE#1 was attempting to intimidate other SPD employees into not cooperating with the lawsuit. This OPA investigation ensued.

OPA interviewed the employees that the Complainant identified as potential witnesses. In total, there were nine employees or former employees listed. In the interviews, three employees stated that they had been approached by NE#1 about a “witness list” (referred to hereafter as Witnesses #1, #2, and #3). All of these employees mentioned that they knew NE#1 to be rude and abrasive. Two other employees stated that they had not witnessed any of the conduct alleged and were unable to offer any additional information. Three employees stated that they did not recall conversations about a “witness list,” but said that they had known NE#1 to be rude and abrasive. One of these three employees, who was NE#1’s supervisor, noted that NE#1 discussed with him a Notice of Complaint she had received from OPA. The supervisor also said that he had counseled NE#1 numerous times about her behavior in the workplace. In addition, he noted that NE#1 suffered from constant pain, which in his opinion caused her to be abrupt and rude at times. He lastly noted that NE#1 was the most senior employee on his team.

OPA also interviewed NE#1. During her interview, she stated that she had received an OPA closing letter regarding a complaint against her and discussed that complaint with her co-workers. That complaint, which was closed as a Contact Log, was filed by the Complainant’s client when she still worked at SPD. It did not relate to the allegations in this investigation. NE#1 also stated that she received a notice from the Public Disclosure Unit pertaining to the lawsuit brought by the Complainant’s client. That notice included documents that the Public Disclosure Unit informed NE#1 would be released to the Complainant. According to NE#1, the names of Witness #1 and Witness #2 were listed on the documents, along with another co-worker who was not identified as a potential witness by the Complainant. NE#1 stated that she believed it was appropriate to talk with her co-workers about the OPA complaint because it had been closed as a Contact Log.

NE#1 also stated in her interview that she did not intend to intimidate any of her co-workers when she asked them about their names appearing in the PDR documents. NE#1 explained her reason for asking by stating: “because SPD advocates direct talk, I wanted to know what Witness #1 and Witness #2, whose names were on the document, thought about it. And I found out.” When asked, NE#1 denied that she ever tried to convince other employees not to file complaints against her. She denied that she had received counseling for being rude to her co-workers. She also specifically denied ever having received counseling from a supervisor about rudeness in the last fourteen years.

During her interview, NE#1 explained that she had a poor relationship with the Complainant’s client. However, NE#1 claimed that she had never been mean to the client when they were co-workers, and that she did not treat her differently than other SPD employees.

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 13. 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.*)



OPA uncovered insufficient evidence to conclude that NE#1 engaged in retaliation against any of the Witness employees. In her interview, NE#1 stated that her questioning of these employees was not intended to intimidate them, and OPA lacks sufficient evidence to prove that this statement is untrue. While OPA notes that NE#1's co-workers and supervisor expressed concerns with NE#1's behavior generally, this is not evidence of specific wrongful conduct or corrupt intent as far as retaliation is concerned. Moreover, even though, as discussed more fully below, OPA finds that questioning fellow co-workers in this manner was unprofessional and inappropriate, that does not cause it to rise to retaliation and/or intimidation.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 3. Employees Shall Not Discourage, Interfere With, Hinder, or Obstruct Any Person from Filing a Complaint or Conducting or Cooperating with an Investigation of an Allegation of a Policy Violation

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

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

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 10. 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. It was alleged that NE#1 may have been dishonest in two respects. First, she was purportedly dishonest when she referred to a "witness list" that she contended was obtained from the Complainant and used it to question witnesses. This was believed to be potentially dishonest as no such "witness list" was created by the Complainant and/or provided to NE#1. Second, NE#1 was alleged to have been dishonest when she denied that she had ever been retrained or counseled on her unprofessional behavior in the last 14 years. This statement was believed to be potentially dishonest given that NE#1's supervisor told OPA the opposite during his interview.

When evaluating the totality of the evidence and when applying the requisite burden of proof, OPA is unable to conclusively establish that the Complainant engaged in dishonesty. With regard to the "witness list," NE#1 denied that she ever obtained a "witness list." She further denied that she referred to any document as such or told others that she received a "witness list" from the Complainant. Instead, she explained to OPA that she learned the names of the Witness employee from documents shared with her by SPD's Public Disclosure Unit. OPA has insufficient evidence to establish that these statements are inaccurate even if there are significant questions raised by the Complainant and the Witness employees in this respect.

NE#1's assertion that she has never been counseled or made aware of concerns regarding her professionalism and whether this constituted dishonesty is also a close call. OPA notes that NE#1's assertions in this regard are directly contradicted by her supervisor and the assertions of multiple of the Witness employees, all of whom OPA deemed



credible. However, given the lack of documentary evidence conclusively establishing that this was an intentional falsehood on NE#1's part, OPA cannot find that she was dishonest.

As discussed above, OPA cannot meet its burden to prove that NE#1 engaged in dishonesty. This does not, however, mean that OPA is conversely finding that she did not do so. Indeed, OPA has significant concerns about whether she told the truth during her OPA interview. Ultimately, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #4

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

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.)

While OPA is unable to establish that NE#1 retaliated against or intimidated her co-workers, or that she engaged in dishonesty, OPA finds that the record clearly indicates that she engaged in ongoing rude, abrasive, and other inappropriate behavior towards other the Witness employees, the client, and others. This was established by the OPA interviews in this case. OPA further finds, by a preponderance of the evidence, that NE#1's behavior was an ongoing source of concern for her unit, and that she was counseled multiple times concerning this matter. Of concern to OPA is that, given her ongoing conduct and based on the substance of her OPA interview, this counseling and retraining apparently had no impact on NE#1.

Lastly, OPA finds that NE#1's decision to question fellow employees concerning their names appearing in PDR responses represented poor judgment. Moreover, even if it did not rise to the level of retaliation and/or intimidation, it gave the appearance of significant impropriety and put the Witness employees in a very difficult position.

Ultimately, OPA finds that totality of NE#1's conduct constituted unprofessional behavior in violation of SPD policy. For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**