



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 24, 2020

CASE NUMBER: 2018OPA-0358

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 (Management Action)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	Allegation Removed
# 3	5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer	Allegation Removed

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:

It was alleged that SPD Human Resources employees may have violated policy when they did not rescind and repeatedly renewed the Special Commissions of retired officers who had engaged in documented misconduct.

ADMINISTRATIVE NOTE:

This investigation concerns alleged misconduct on the part of a non-represented SPD employee. As such, no contractual deadlines apply to this matter. For this reason, OPA has administratively set the 180-day deadline for this case as the date of this DCM.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy

Background Facts

The facts of this case arise out of 2017OPA-1036. In that case, an SPD employee working secondary employment flagging traffic at a Seattle City Light (SCL) jobsite made racist statements to SCL employees. Two retired SPD officers who held Special Commissions that permitted them to work certain secondary employment heard or became aware of the statements but did not report them to SPD or OPA. During its investigation – which resulted in Sustained findings against the SPD employee who used the slurs – the Special Commission holders all stated that, because of their retired status, they did not believe that they had an obligation to report the misconduct to SPD and/or OPA. In addition, these individuals did not believe that they had such a duty as a requirement of the Special Commissions they held.

At around this same time, OPA evaluated other cases in which it was determined that Special Commission holders had engaged in misconduct, but they had maintained their Special Commissions and, in fact, had them renewed.

Given all of the above, as well as OPA's inability to clearly discern the contours of and safeguards within SPD's Special Commissions policies, OPA commenced two further investigations. The first, which is the investigation discussed herein, evaluated whether employees of SPD Human Resources (HR) violated policy when they did not rescind and repeatedly renewed the Special Commissions of retired officers who had engaged in documented misconduct. The second, which was investigated under 2018OPA-0395, considered whether there was a duty on the part of Special Commission holders to report misconduct and whether their failure to do so violated policy.

Policy Recommendations from 2015OPA-0370

In one similar case (2015OPA-0370), which involved a holder of a Special Commission who was found to have engaged in unprofessional conduct, OPA concluded that there was a lack of clarity and organization surrounding how Special Commissions were granted and tracked over time. Further, OPA determined that there was no training provided to Special Commission holders or, for that matter, any communications of expectations that they uphold SPD policies and report serious misconduct. Indeed, from OPA's review of the then-existing paperwork provided upon the issuance of Special Commissions, it was unclear whether holders of the Special Commissions were required to be familiar with and abide by SPD policies or whether they had any affirmative duty to report misconduct.

As a result of the issues raised in 2015OPA-0370, as well as those implicated by 2017OPA-1036, OPA issued a Management Action Recommendation requesting that the Department substantially rework its Special Commission program. Included in this recommendation was OPA's suggestion that holders of Special Commissions receive training on fundamental SPD policies, such as those concerning use of force, bias-free policing, and professionalism, as well as training concerning what constitutes serious misconduct and whether and when holders are required to report such conduct to SPD. In response to OPA's Management Action Recommendation, SPD agreed to rework its policies and practices in this area.

Investigation into 2018OPA-0358 and 2018OPA-0395

As part of the investigation into 2018OPA-0358 and 2018OPA-0395, OPA determined that the Administrative Staff Analyst (ASA) who had been responsible for granting Special Commissions during the time period in question had retired. OPA learned that, after her retirement and based on OPA's policy recommendations, SPD HR had instituted new practices.

OPA interviewed the current ASA employed by SPD HR. She explained that, at the time of the initial complaint, there was no formal process for granting Special Commissions. She indicated that Special Commissions were granted at the discretion of the former ASA, and that when the former ASA became aware of relevant information associated with Special Commission holders, she had added that information to files she maintained using handwritten notes or post-its. When asked what process had been in place to prevent Special Commissions from being issued in error, the current ASA answered that no additional process then existed. The current ASA noted that, when she began her role at SPD HR, she worked with the HR director and the SPD lieutenant who supervised Special Commission holders to create the new processes.

OPA also interviewed SPD's Executive Director of Legal Affairs. The Executive Director of Legal Affairs confirmed to OPA that Special Commission holders are now subject to relevant SPD policies, including the requirement to report instances of bias-based policing. The application for the Special Commission now also specifies that holders "shall promptly report" cases of unprofessional or biased behavior by SPD officers employed by the Department.

Subsequent Steps Taken

OPA has had ongoing meetings with SPD HR and SPD Legal Affairs to discuss the work SPD HR has completed on its new processes. Currently, applicants for Special Commissions are checked against SPD's discipline database, as well as run through NCIC, and are approved by the HR director rather than by an ASA. Failure to obey policies can, under the new system, result in revocation of a Special Commission and individuals who violate SPD policies may be barred

from receiving Special Commissions in the future. For its part, OPA has also developed new internal methods for handling complaints against Special Commission holders that are consistent with SPD's policies and OPA works in close collaboration with SPD HR in this respect.

Analysis of 2018OPA-0358

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. This policy was alleged given what appeared to be continuing ongoing problems with the issuance, re-issuance, and monitoring of Special Commissions.

While OPA finds that there were, in fact, numerous problems with SPD's Special Commissions program, OPA found no evidence that they were the result of intentional malfeasance on the part of any individual Department employee. Instead, OPA determined that they were caused by a lack of clear policies and practices in this area.

OPA believes that SPD has made substantial strides in this area and commends the Department, and specifically the HR Director, for revising many of the policies surrounding Special Commissions. OPA notes, however, that its Management Action Recommendations on this topic technically remain outstanding and OPA has not been notified by SPD that the recommendations have been fully implemented. As such, OPA renews its previous Management Action Recommendations here and requests that the Department provide an update as to implementation, as well as a description of the specific steps taken and safeguards implemented, as soon as practicable under the circumstances.

Recommended Finding: **Not Sustained (Management Action)**

Named Employee #1 - Allegation #2

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

OPA has determined that this allegation fully addressed in the context of Allegation #1 and, as such, recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #3

5.001 - Standards and Duties 15. Employees Obey any Lawful Order Issued by a Superior Officer

OPA has determined that this allegation fully addressed in the context of Allegation #1 and, as such, recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**