



CLOSED CASE SUMMARY

ISSUED DATE: MARCH 24, 2020

CASE NUMBER: 2018OPA-0395

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)

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:

OPA initiated this complaint to determine whether individuals who held an SPD Special Commission had a duty to report misconduct by SPD employees.

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 was investigated under 2018OPA-0358, evaluated whether employees of SPD Human Resources (HR) violated policy when they did rescind

and repeatedly renewed the Special Commissions of retired officers who had engaged in documented misconduct. The second, which is the investigation discussed herein, considers 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-0395

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, as well as concerning the retired SPD employees failure to take any action even though they were aware of racial slurs that were used by an SPD officer.

As discussed above, OPA determined that at the time of the incident, no process existed for Special Commission Holders to be held accountable to SPD policies or required them to report serious misconduct. This was the case even though, by function of holding the Special Commission, they were entitled to privileges not available to all other community members. Moreover, OPA found it concerning that neither of the Special Commission holders at issue here felt the obligation to take any action even though they were aware that an SPD officer had used abhorrent language, including racial slurs. OPA believes that this inaction was problematic, and a reasonable person would find that it constituted unprofessional behavior on the part of the Special Commission holders that reflected poorly on the Department as a whole.

Given this, and as referenced in the other related investigations, OPA concluded that wholesale change needed to be made to SPD's Special Commission program. As a result, the Department has made a number of positive changes, including ensuring that Special Commission holders are now subject to relevant SPD policies and must "promptly report" serious misconduct engaged in by SPD employees.

OPA believes that SPD has made substantial strides in this area and commends the Department, and specifically the HR Director, for revising 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 Management Actions here and requests that the Department provide an update as to implemental 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

As this allegation is fully subsumed in Allegation #1, above, OPA recommends that it be removed.

Recommended Finding: **Allegation Removed**