



CLOSED CASE SUMMARY

ISSUED DATE: FEBRUARY 6, 2020

CASE NUMBER: 2019OPA-0577

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.130 - Supervisor/Employee Relationships 3. Employees Must Report the Development of Personal Supervisor/Subordinate Relationships	Not Sustained (Unfounded)
# 2	5.001 - Standards and Duties 10. Employees Shall Strive to be Professional	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 (Unfounded)
# 2	5.001 - Standards and Duties 18. Employees Must Avoid Conflicts of Interest	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:

An anonymous Complainant alleged that the Named Employee and an unidentified male officer kissed and engaged in sexual contact while on duty in an elevator at SPD Headquarters. The anonymous Complainant further alleged that, at the time, the Named Employee was a student officer and the unidentified male officer was her Field Training Officer.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.130 - Supervisor/Employee Relationships 3. Employees Must Report the Development of Personal Supervisor/Subordinate Relationships

OPA received an anonymous complaint alleging potential sexual contact between Named Employee #1 (NE#1) and an unidentified male SPD officer. The Complainant described that they were "kissing and committing a sexual act" while in an elevator at SPD Headquarters. The Complainant alleged that, at this time, NE#1 was a student officer and the unidentified SPD officer was her Field Training Officer (FTO). The Complainant further stated that they were on-duty at the time and were performing a mail run. The Complainant asserted that the alleged behavior was "unprofessional and disgusting on behalf of an FTO to say the least." The Complainant identified that another officer – referred to here as Witness Officer #1 (WO#1) – observed the conduct and told other officers about it.

Based on this complaint, OPA initiated an investigation. Given the nature of the complaint against NE#1, OPA classified two allegations for investigation. The first concerned the requirement under SPD Policy 5.130-POL-3 that

officers report a personal relationship with a supervisor to the Department. This allegation was added given the purported romantic relationship between NE#1 and an FTO and the lack of any documentation reflecting the reporting of such a relationship. The second concerned professionalism. This allegation was added because, had NE#1 kissed or engaged in sexual activity with an FTO while on duty and in a Department facility, it would have been unprofessional and outside of the Department's expectations of officers' conduct.

OPA interviewed WO#1 to determine whether he had any knowledge of the Complainant's allegations. WO#1 recalled that, in the winter of 2019, he observed two officers together in an elevator at SPD Headquarters. WO#1 said that the two individuals were close enough together that it appeared to him that they could have been kissing. WO#1 did not see any other sex acts being performed. WO#1 told OPA that, when the elevator door opened and the two individuals saw him, they quickly separated and left the elevator. WO#1 stated that the male officer may have said something under his breath about getting caught. WO#1 recalled that this occurred at approximately 3:50 a.m. when he was also performing a mail run. He stated that what he saw very much surprised him and he believed that sexual contact between a student officer and an FTO was clearly inappropriate.

He identified one of the individuals in the elevator as an Asian female and said that he remembered that she was taller than him and the male she was with in the elevator. WO#1 stated that the male officer was White. WO#1 told OPA that he later saw NE#1 at his precinct and identified her as being the female officer in the elevator. At the time of his OPA interview, he did not know the identity of the male officer. However, another officer had opined to him that the male officer was possibly NE#1's FTO from when she was assigned to the South Precinct. WO#1 said that he told another officer what he saw but acknowledged that other officers could have overheard what he said. He posited that one of the eavesdroppers was the anonymous Complainant.

OPA verified that, on February 5, 2019, WO#1 was at SPD Headquarters performing the mail run at the same time as NE#1 and another officer. NE#1 was a student officer at that time and the other officer – referred to here as Witness Officer #2 (WO#2) – was her FTO and was assigned to the South Precinct. OPA determined that there was no security video recorded inside of the elevators at SPD Headquarters, as well as that the officers would not have activated Body Worn Video given the nature of the assignment that they were engaged in.

OPA interviewed NE#1. She acknowledged that she performed a mail run with WO#2 on the date in question. She stated that they were in the elevator together but denied that they kissed or engaged in any inappropriate conduct. She did not recall whether another officer was standing there when the elevator doors open and conceded that it was possible. NE#1 told OPA that she had "never had any kind of relationship outside of a—subordinate-supervisor" with WO#2. She further stated that she did not have a romantic relationship with any FTO. NE#1 told OPA that she was "shocked" by the allegation.

OPA also interviewed WO#2. WO#2 stated that he was NE#1's FTO at the time. In response to questions from his Guild representative, he disclosed that he is 5'8" and NE#1's height was identified as 6'2". WO#2 did not recall seeing anyone when he got out of the elevator but said that it was possible. He also did not remember saying something under his breath when he left the elevator. However, WO#2, like NE#1, denied kissing or engaging in sexual activity in the elevator.

After reviewing the totality of the evidence, OPA still had questions regarding what exactly WO#1 saw in the elevator and, specifically, whether he actually observed NE#1 and another officer kissing. As such, OPA re-interviewed him. At that time and when asked directly whether he saw NE#1 kissing another officer, WO#1 said that he did not actually see this. However, he confirmed that they were close enough together for him to believe that this was a possibility.

Prior to this second interview, OPA believed the question of whether NE#1 and an unknown officer acted contrary to Department policies to be inconclusive. However, the fact that WO#1 cannot conclusively say that they were engaging in this conduct tips the scales to an unfounded finding. This is the case even if, as WO#1 explained, NE#1 and the unknown officer were standing so close together that it appeared that they could be kissing and quickly moved apart when the elevator doors opened and they saw WO#1. Ultimately, when applying the requisite burden

of proof, there is simply insufficient evidence to determine that this or any other act they engaged in at that time constituted misconduct.

As such, OPA recommends that this allegation and the other allegations in this case be Not Sustained – Unfounded.

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

Named Employee #1 - Allegation #2

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

For the same reasons as stated above (see Named Employee #1, Allegation #1), OPA recommends 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

As discussed above, OPA concludes that the weight of the evidence supports a finding that the conduct alleged by the anonymous Complainant did not occur. As such, OPA recommends that the allegation against the unknown SPD employee be Not Sustained - Unfounded.

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

Named Employee #2 - Allegation #2

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

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

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