



## CLOSED CASE SUMMARY

ISSUED DATE: JULY 14, 2020

CASE NUMBER: 2019OPA-0772

### **Allegations of Misconduct & Director's Findings**

#### **Named Employee #1**

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 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 Complainants alleged that the Named Employee was unprofessional during a phone call with them and retaliated against Complainant #1 when she filed a complaint against him with his law enforcement agency.

### **SUMMARY OF INVESTIGATION:**

A woman (referred to here as the Subject) called 911 to report that her dog had been taken from her and not returned. Officers, including Named Employee #1 (NE#1), responded to the incident. The Subject told the officers that she met another woman (referred to here as Complainant #2) on Facebook and that Complainant #2 offered assistance to the Subject, who was unsheltered at the time. Specifically, Complainant #2 provided her with legal advice, gave her a space heater, and offered to wash her clothes. The Subject informed Complainant #2 that her dog had a lump in its back. Complainant #2 then offered to take the dog to a veterinarian. The Subject allowed her to do so. However, when the Subject later asked about the status of the dog, Complainant #2 did not respond and blocked her on Facebook. The Subject was later able to contact Complainant #2 and, when she requested the dog be returned, Complainant #2 disclosed that the dog had been "relocated." Complainant #2 also told the Subject that she had sought and obtained an order of protection against her. The Subject then contacted 911. She recalled that she was initially told by SPD that, unless she could provide proof of ownership, it was a civil matter. She later provided such proof of ownership, including that the dog had a microchip.

NE#1, who was a Field Training Officer (FTO) at the time, called Complainant #2 with her student officer, Witness Officer #1 (referred to here as WO#1). Complainant #2 told WO#1 that she had previously spoken with SPD officers and she was informed that this was a civil matter. She stated that she rehomed dogs and that the Subject's dog had been rehomed in Idaho. Complainant #2 declined to provide the new address for the dog. At some point, Complainant #2's husband (referred to here as Complainant #1) also got onto the call.

All parties to the phone call described it as being unproductive. NE#1 and WO#1 asserted that the Complainants were argumentative, spoke over them and each other, and stated that they were being harassed by SPD. NE#1 and WO#1 described the call as ending when the Complainants told the officers to speak with their attorney with additional questions. The Complainants contended that that WO#1 appeared not to know how to handle this situation and kept having to run questions by NE#1. The Complainants recounted that, when NE#1 got on the



phone, she was aggressive and accusatory. They believed that the way NE#1 spoke to them was unprofessional; however, Complaint #2 acknowledged that NE#1 did not use profanity towards them and that she did not make any statements that she could specifically point to as being rude.

The Complainants later filed a complaint with OPA concerning NE#1's alleged unprofessionalism. On October 23, 2019, at 1442 hours, OPA sent NE#1 a required contractual notification that a complaint had been filed against her by the Complainants.

As part of its investigation, OPA interviewed the Complainants. Both reiterated their belief that NE#1 was unprofessional towards them during their phone call with her and WO#1. Complainant #1 also informed OPA that he was a law enforcement officer and that, after this incident, NE#1 filed a complaint with his agency alleging that he was unprofessional. Complainant #1 felt that this was done in retaliation for his filing a complaint against NE#1. Complainant #1 expressed concern that the complaint against him could negatively impact his chances for promotion. Both Complainants also requested that the report generated concerning this incident be altered to remove the Complainants as criminal suspects.

OPA verified that NE#1 sent a complaint to Complainant #1's law enforcement agency after she received the notice of complaint for this case. Specifically, NE#1 sent her complaint on the same day that she received the notice at 2138 hours.

OPA interviewed NE#1. She reiterated her belief that the Complainants were aggressive, argumentative, uncooperative, and spoke over her and WO#1. While NE#1 recognized that she asked probing and direct questions, she explained that she was trying to elicit information concerning the theft of the dog in order to sufficiently document this incident for follow-up detectives. NE#1 denied that this constituted unprofessional behavior towards the Complainants.

NE#1 also denied that she made a complaint with Complainant #1's law enforcement agency as retaliation for him filing a complaint against her. She explained that, prior to receiving her contractual notice from OPA, she spoke with supervisors and another officer about her intention to file a complaint against Complainant #1. She stated that she did so in order to ensure that she was not engaging in any inappropriate activities and that she was going through proper channels when filing the complaint. She noted that all of this communication occurred prior to her receiving the contractual notice from OPA.

#### **ANALYSIS AND CONCLUSIONS:**

##### **Named Employee #1 - Allegations #1**

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

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.) The policy further states the following: "Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person." (*Id.*)



Even assuming that the Complainants' recitation of the phone call is accurate, OPA finds insufficient evidence to establish that NE#1 violated SPD's professionalism policy. First, OPA finds it significant that Complainant #2 confirmed that NE#1 did not use profanity during the call and that Complainant #2 could not identify any specific unprofessional statement made by NE#1. Second, OPA notes that asking probing and accusatory questions is an appropriate investigative technique and, while it can be off-putting, such questions, standing alone, are not unprofessional.

Lastly, to the extent that the Complainants are asserting that NE#1's filing of the complaint against Complainant #1 constituted unprofessionalism, that claim is addressed in the context of Allegation #2.

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

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

**Named Employee #1 - Allegation #2**

***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.*)

During the investigation, NE#1 presented evidence establishing that she planned to file a complaint against Complainant #1 prior to receiving notice of the OPA investigation against her, as well as that she took action to determine the best way to do so. As such and given her proven intent, the evidence does not support a finding that she filed the complaint against Complainant #1 as a form of retaliation.

Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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