



CLOSED CASE SUMMARY

ISSUED DATE: MAY 5, 2020

CASE NUMBER: 2019OPA-0821

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	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 Complainant alleged that the Named Employee retaliated against him.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegations #1

5.001 - Standards and Duties 14. Retaliation is prohibited

The Complainant is a former SPD officer. His employment was terminated by the Chief of Police who determined, after an OPA investigation, that the Complainant had acted contrary to three SPD policies. Relevant to this case, the Chief determined that the Complainant made various statements, a number via text messages, that rose to the level of biased policing. The Complainant later alleged that Named Employee #1 (NE#1), his Captain at the time, "had it in" for him because of a disparaging remark allegedly made by the Complainant against NE#1. As a result of this claim, OPA and SPD's EEO Investigator commenced this interview. OPA and EEO jointly interviewed the Complainant, NE#1, and two witnesses.

During his OPA interview, the Complainant described a phone conversation had had with another officer – referred to here as Witness Officer #1 (WO#1) – in which WO#1 divulged NE#1's purported enmity towards the Complainant. WO#1 told the Complainant that this was based on NE#1's belief that the Complainant used the N-word towards NE#1. The Complainant denied that he ever made such a statement or that he ever directed that slur towards NE#1. The Complainant asserted his belief that NE#1 informed WO#1 and potentially others of the alleged use of a slur by the Complainant. He contended that this was inconsistent with the confidentiality requirements for active OPA investigations. However, the Complainant noted that WO#1 did not state that he learned this information from NE#1. The Complainant also explained that he did not ask WO#1 how he learned this information. The Complainant also told OPA of his belief that WO#1 was aware of the contents of the complaint that initiated his prior OPA investigation, which was contained in an envelope mailed to his then supervisor – referred to below as the Sergeant. The Complainant stated that WO#1 became aware of this information shortly after the Sergeant was interviewed by OPA in that prior investigation.

WO#1 was questioned about the phone call he may have had with the Complainant. WO#1 denied recollection of a phone call in which he discussed NE#1's opinion of the Complainant. WO#1 further did not remember ever telling the Complainant that NE#1 had it in for him. WO#1 indicated that this did not sound like something he would have



said. However, WO#1 said that he did have a phone conversation with the Complainant during which he relayed his awareness of a package of information in which the Complainant referred to NE#1, a Sergeant, and WO#1 using racial slurs, including the N-word and the term “Black monkey.” WO#1 said that the information he relayed to the Complainant was a rumor that “floating around the Department” and that “it was pretty much common knowledge around the precinct.” WO#1 said that this information “absolutely” did not come from NE#1 or OPA. He was unsure whether he learned it from the Sergeant who was also allegedly mentioned in the package of information. He stated that the rumor was “rampant” throughout the precinct and that, as a result, he could have learned it from someone else.

OPA also interviewed the Sergeant. He described receiving the packet of information. He said that its contents, particularly the reference to racial slurs, greatly concerned him. He stated that he had no relationship with the sender but that the sender knew information that the Sergeant believed had to have been relayed to him by the Complainant. The Sergeant recalled that he shared an office with another supervisor and that supervisor was present when he opened the envelope. He did not recall whether he asked the other supervisor to witness him opening the envelope. The Sergeant brought the packet to his Lieutenant and asked what he should do and whether he should give the packet to NE#1. The Lieutenant stated that he would handle it and that an OPA referral would be made. The Sergeant said that he did discuss the substance of the packet and the racial slurs with other individuals at the Southwest Precinct. This included WO#1. However, the Sergeant did not let anyone else see the contents of the packet except for his Lieutenant. He stated that, at the time of these conversations, he had had not received an order from OPA preventing him from having such discussions. He believed that the allegations regarding the Complainant’s use of racial slurs were true. The Sergeant told OPA that he had no knowledge concerning what actions, if any, NE#1 took as a result of the packet.

Lastly, OPA interviewed NE#1. He provided an overview of some of the ongoing conflicts between the Complainant, the Sergeant, and other individuals in their squad, including WO#1. NE#1 said that he previously had a friendly relationship with the Complainant. He noted that the Complainant was a capable officer when he chose to work hard. NE#1 recalled relieving the Complainant from duty as part of the prior OPA investigation. He stated that this was done based on consultation with the chain of command. NE#1 stated that he explained to the Complainant why he was being placed on administrative leave and that this would have involved going over the generalities of the allegations against him. NE#1 indicated that the Complainant then signed paperwork.

NE#1 stated that he became aware of the allegations that were mailed to the Sergeant. He told OPA that the information was provided to him when it was passed up the chain of command and he, in turn, made an OPA referral. NE#1 said that he did not discuss the allegations with WO#1. He was surprised by the allegations and they made him concerned. However, he denied that he treated the Complainant improperly as a result of his knowledge. NE#1 noted that the disciplinary action against the Complainant was based on recommendations by OPA and a final decision by the Chief of Police. He denied that he engaged in any retaliatory activities against the Complainant because of the allegations concerning his racially motivated statements.

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.*)



In summary, OPA construes the Complainant to be alleging that NE#1 retaliated against him in two respects: (1) NE#1 relayed information that was otherwise confidential to others within the Southwest Precinct; (2) NE#1 caused negative effects to occur to the Complainant's career based on his purportedly erroneous belief that the Complainant used the N-word.

OPA's investigation indicated that neither allegation was supported by the evidence. First, it is unclear why the Complainant believes that NE#1 "leaked" information about him. The Complainant acknowledged that WO#1 did not state that he heard such information from NE#1. Indeed, WO#1 expressly denied this at his OPA interview. NE#1 also denied sharing this information with WO#1. Accordingly, there is no basis to conclude that NE#1 spread false information – or, for that matter, any information – about the Complainant in order to negatively affect his career and reputation.

Second, NE#1 expressly denied that his personal opinion of the allegations against the Complainant caused him to retaliate against the Complainant or otherwise treat him improperly. While the Complainant believed that NE#1 "had it in" for him, the disciplinary decision to terminate the Complainant's employment was made by the Chief of Police, not NE#1. Even if NE#1 was disappointed in the Complainant and, indeed, angry at him, there is no evidence that this played any role in the Complainant being placed on administrative leave or affected the disciplinary action taken against him.

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

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