



## ***CLOSED CASE SUMMARY***

ISSUED DATE: SEPTEMBER 7, 2020

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2019OPA-0836

### **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	Allegation Removed
# 2	5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication	Not Sustained (Inconclusive)
# 3	5.100 - Operations Bureau Individual Responsibilities I. Patrol Officers A. Responsibilities	Sustained

#### **Imposed Discipline**

One (1) Day Suspension

#### **Named Employee #2**

Allegation(s):		Director's Findings
# 1	5.002 – Responsibilities of Employees Concerning Complaints of Possible Misconduct 5. Supervisors Will Investigate and Document Certain Allegations of Misconduct	Not Sustained (Unfounded)
# 2	5.002 – Responsibilities of Employees Concerning Complaints of Possible Misconduct 6. Employees Must Otherwise Report Misconduct	Not Sustained (Unfounded)

#### **Named Employee #3**

Allegation(s):		Director's Findings
# 1	5.002 – Responsibilities of Employees Concerning Complaints of Possible Misconduct 5. Supervisors Will Investigate and Document Certain Allegations of Misconduct	Not Sustained (Unfounded)
# 2	5.002 – Responsibilities of Employees Concerning Complaints of Possible Misconduct 6. Employees Must Otherwise Report Misconduct	Not Sustained (Unfounded)

#### **Named Employee #4**

Allegation(s):		Director's Findings
# 1	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation	Not Sustained (Lawful and Proper)

***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.***



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**EXECUTIVE SUMMARY:**

The Complainant alleged that Named Employee #1 (NE#1) created false on-view incidents in the Mobile Data Terminal (MDT) to avoid responding to 911 calls and would remain logged to calls facilitate breaks. The Complainant further alleged that the other Named Employee supervisors failed to investigate and refer NE#1's misconduct to OPA when the Complainant reported it.

**ADMINISTRATIVE NOTE:**

After the discipline meeting in this matter, OPA amended this DCM to provide specific examples of the nine cases in which OPA found that NE#1 failed to meet the baseline expectations for patrol officers. This additional information is set forth in Allegation #3.

**SUMMARY OF INVESTIGATION:**

The Complainant and NE#1 were both patrol officers assigned to Queen sector in the West Precinct. In that capacity, they were tasked with responding to 911 calls, as well as responding to incidents they observed and assisting the public when contacted. On November 13, 2019, the Complainant contacted OPA. He alleged that another officer in his squad, NE#1, had a practice of generating fictitious on-views and entering them in MDT to avoid responding to 911 calls. The Complainant alleged that he and another officer had observed this behavior since NE#1 was first assigned to Queen sector in 2014. The Complainant observed that NE#1 would log himself as responding to an on-view incident but would not update CAD with any names, license plates, or identifying information and would not record any interactions using Body-Worn Video (BWV). The Complainant also stated that he observed NE#1 during some of these alleged incidents, during which he observed no visible disturbance that would give rise to an on-view. He further saw NE#1 remain in his patrol vehicle and take no police action.

The Complainant also stated that he brought these concerns to his chain of command in 2014. At that time, Named Employee #2 (NE#2) was an Acting Sergeant and the Complainant said that Named Employee #3 (NE#3) was a Lieutenant. He claimed he turned over his notes to them and that, subsequently, NE#1 was reassigned to King sector. Later, NE#1 was reassigned back to Queen sector and the Complainant indicated that NE#1's improper conduct then resumed. NE#1 claimed that he reported NE#1's ongoing behavior to his sergeant, Named Employee #4 (NE#4), on or about May 13, 2019, but that nothing was done. This OPA investigation ensued.

OPA conducted a search through CAD for calls logged by NE#1 between January and March 2019. This search revealed 17 events during a 3-month period for which a lack of documentation gave rise to a plausible inference that the call was fictitious. The majority of these on-view calls were coded as "suspicious circumstances," while others were "assist the public," "theft," "burglary," and "disturbance." These CAD events were not associated with any BWV, and no suspect, victim, or license plate information was added. It did not appear that NE#1 updated any of these incidents. Notably, all other calls to which NE#1 responded on those days appeared to be associated with BWV footage and CAD updates. Generally, the data in these calls revealed that NE#1 spent his downtime at the Interbay Athletic Complex parking lot as well as other parking lots in the same general area.

OPA interviewed NE#1. During his interview, NE#1 explained that he and other officers in his squad had been directed by supervisors to code premise checks as "suspicious circumstance" calls. A premise check is a call in which an officer responds to a location and observes to determine if there are any suspicious circumstances. NE#1 said



that he understood it to be unnecessary to activate BWV on these types of calls. NE#1 provided explanations for the lack of documentation and the extended time he logged on eight of the 17 calls OPA identified. Given the lack of any witnesses to the incidents and the absence of documentation, OPA was unable to assess the veracity of NE#1's explanations. For the remaining nine calls, NE#1 stated that he did not recall why he added no additional documentation and made no updates to the CAD event. He was unable to explain the lack of documentation for these calls other than that he did not recall the incidents in question.

OPA interviewed NE#2, a Lieutenant at the precinct who had previously supervised both the Complainant and NE#1 while an Acting Sergeant. NE#2 stated that she did not recall the Complainant making a formal complaint to her about NE#1's conduct when she was an Acting Sergeant in 2014. She recalled that there was a lot of animosity between the Complainant and NE#1, and that they would engage in "banter" related to the amount of time the other spent on calls. She said that the Complainant perceived NE#1 to be "lazy" and "not proactive." NE#2 said that she and NE#3 decided to transfer NE#1 to King sector in 2014 to give him more experience in a fast-paced sector, which NE#2 stated was for NE#1's benefit as a new officer. NE#2 denied ever being aware of evidence showing that officers fabricated CAD events to avoid being dispatched to calls.

NE#2 said that the Complainant never gave her any written notes regarding his allegations that NE#1 created fictitious calls. NE#2 said that in 2019, after NE#1 was returned to Queen sector from King sector, the Complainant came to her with an issue regarding NE#1. She stated that she told him to report it to his direct supervisor, NE#4. At the close of her interview, NE#2 stated that the Complainant had recently received a PAS entry to the effect that he had remained logged to a call for too long. NE#2 theorized that the Complainant filed his complaint to immunize himself from discipline and out of frustration related to the PAS entry.

OPA interviewed NE#3, who was assigned to the West Precinct as a Lieutenant during the time that NE#1 was transferred from Queen sector to King sector. NE#3 said that he never received any complaints or evidence, written or otherwise, from the Complainant and that, at the time the Complainant said he made his first complaint (in or about February, 2014), NE#3 was assigned to the Communications Section. NE#3 said that he decided on the transfer to balance squads and not because of complaints about NE#1. NE#3 said that he felt it had been a mistake to assign NE#1 to Queen sector in 2014, because veteran officers often seek out that sector due to its slower pace and NE#1, a new officer, "fell into that." NE#3 did not recall any specific performance issues regarding NE#1. He characterized the Complainant's allegations that NE#1 fabricated CAD events as "a major slap in the face" to other officers if true, and said that, as a supervisor he would have taken action had he been made aware of evidence that such behavior occurred.

OPA interviewed NE#4, who was the Sergeant supervising NE#1 when the Complainant made these allegations in 2019. NE#4, who has served approximately 34 years with SPD, stated that he had never observed an officer take the actions the Complainant alleged. NE#4 said that the only permissible reason for an officer not to activate BWV when interacting with the public was if directed by a supervisor. He stated that at times it may be impractical to activate BWV for brief "assist the public" interactions.

NE#4 told OPA that, on May 13, 2019, the Complainant approached him with printouts that tended to suggest NE#1 was "milking" calls by remaining logged to them longer than necessary. In that conversation, NE#4 said that the Complainant alleged a "hostile" work environment, leading NE#4 to report the incident to EEO. NE#4 also recalled the Complainant saying that he had compiled a "book" of additional evidence about NE#1; however, the Complainant declined to show it to NE#4 when asked. As a result of his conversation with the Complainant, NE#4



sent a squad-wide email reminding officers to log their time judiciously and later reiterated those expectations in a meeting.

NE#4 said that he did not have any basis to believe that NE#1 was fabricating calls. He said that NE#1 might be “milking” some calls given the extended time for which he remained logged to them. He said that he had never personally observed NE#1 to be derelict in his police duties. He said that he reported NE#1’s concerns to EEO rather than OPA or the chain of command based on NE#1’s statements about a hostile work environment.

OPA also interviewed the Complainant. In his interview, the Complainant stated that in addition to the things he alleged in his complaint, he is involved in an EEO complaint against NE#1 and NE#2, the Lieutenant. He alleged that due to a prior dispute with NE#1, he felt threatened in NE#1’s presence. The Complainant also said that NE#2 made a comment that amounted to age discrimination against him, and that he subsequently received a PAS entry from NE#2 for spending too long logged to a call. He alleged that he provided his supervisors with documentation of NE#1’s misconduct, but that nothing has been done to date.

OPA also interviewed two other officers in the same squad. In general, the other officers were unaware of any instance in which NE#1 fabricated a CAD event. They said that NE#1’s practice of parking at Interbay Athletic Center or in a parking lot on Elliott Avenue was common practice in the squad because those locations provided easy access to most of Queen sector. They could not account for several of the discrete instances in which NE#1 appeared not to document any police activity on calls, but said that for premise checks and some “assist the public” calls, it would not be unusual for an officer not to activate BWV. One of the officers noted friction between the Complainant and NE#1 and said that it had, at times, negatively impacted the squad.

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

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

As discussed more fully below, OPA finds that the evidence indicates that NE#1 logged to calls on multiple occasions for extended time periods and that, during those calls, there is no evidence that he engaged in any law enforcement activity. OPA finds that this violated policy, including the Department’s expectations of NE#1’s professionalism. Unprofessional conduct is also fully captured by 5.100(I)(A), which is addressed in the context of Allegation #3. Accordingly, OPA finds it unnecessary to also recommend that this allegation be Sustained and, instead, recommends that it be removed.

Recommended Finding: **Allegation Removed**

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

##### ***5.001 - Standards and Duties 11. Employees Shall Be Truthful and Complete in All Communication***

SPD Policy 5.001-POL-11 requires Department employees to be truthful and complete in all communications.

In OPA’s estimation, a preponderance of the evidence establishes that NE#1 could not provide any explanation for what he did during nine separate calls over a three-month period. OPA believes that, if a larger time period were looked at, additional evidence of calls with no documentation, video, or apparent activity would be uncovered. OPA finds that NE#1’s conduct clearly violated Department policy and expectations. OPA further finds that there is the distinct possibility that, in logging to extended “suspicious circumstances” where he was not working, NE#1 may



have intentionally fabricated work to prevent being dispatched to actual calls for service. If he did so, this would constitute dishonesty violating policy.

The above being said, OPA does not believe that it can meet the necessary evidentiary standard required to prove dishonesty. Most notably, OPA does not have video indicating that NE#1 fabricated calls, an eyewitness account from another officer or community member, or other evidence that could more conclusively prove dishonesty. Given this, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

### **Named Employee #1 - Allegation #3**

#### ***5.100 - Operations Bureau Individual Responsibilities I. Patrol Officers A. Responsibilities***

SPD Policy 5.100 sets forth the general responsibilities of Department employees. SPD Policy 5.100(I)(A), which concerns patrol officers, mandates, among other duties, that officers: “monitor and take appropriate action regarding criminal activity in assigned area”; “complete reports accurately”; “update MDT/CAD log to include” required information; “demonstrate consistent work habits which reflect a high standard of performance and initiative”; and “remain professional at all times.”

It was alleged that NE#1 had a regular practice of creating fictitious calls and logging to those calls for extended periods of time in order to avoid being dispatched to other real calls for service. To determine whether this occurred, OPA analyzed a three-month period and located 17 calls with no paperwork and no video that fit NE#1’s alleged pattern. After being interviewed, NE#1 was unable to provide any legitimate reason for why paperwork was not completed in nine of those calls. As stated above, OPA believes it likely that, if its search was expanded, many more of these types of incidents would have been identified.

Focusing on the nine calls in question, NE#1 failed to comply with the various requirements of SPD Policy 5.100(I)(A).

First, he did not appear to take appropriate action or, indeed, any action on the majority of these calls. For example, in incident number 2019-164388, NE#1 was dispatched to a road rage call. However, instead of responding to the location of the call, he instead drove to Interbay where he remained for an hour. Notably, this is the location where NE#1 would often log to suspicious circumstances call for over an hour. As another example, in incident number 2019-074888, NE#1 logged to an on-view burglary and remained on that call for around three hours. However, he did not identify a victim, make an arrest, record video, complete paperwork, or update the CAD.

Second, NE#1 did not record any BWV for the nine calls, even though many of them – including 2019-033930, 2019-051841, 2019-074888, and 2019-166442, which are discussed below – required him to do so.

Third, in all of the incidents, he did not complete any paperwork. For example, in incident number 2019-033930, he logged to a vehicle theft incident where he noted in CAD that there was damage to the vehicle and items stolen. However, he did not complete a report because, according to his CAD update: “the victim of [the] car prowler decided she did not need a report.” This was the case even though he was logged to the call for approximately two hours. As another example, in incident number 2019-051841, NE#1 logged to a disturbance call at a Starbucks where he was joined by another officer. NE#1 updated the CAD indicating that he was contacting someone. However, NE#1 did not



complete any reporting for the incident, including documenting the nature of the contact. There was no video memorializing what NE#1 did at the Starbucks for 40 minutes.

Fourth, he often did not update MDT/CAD with any detailed information concerning his law enforcement activity. For example, in 2019-166442, he reported responding to an on-view theft/car prowl. However, he did not update any information concerning the complainant, the victim, the car that was prowled, the potential suspect, or what law enforcement activity he took.

By failing to comply with the baseline requirements of this policy, NE#1 did not demonstrate work habits reflecting a high standard of performance and initiative and, indeed, did the opposite. Moreover, the totality of his actions constituted unprofessional behavior that was inconsistent with the expectations of both the Department and the community. In reaching this finding, OPA finds it significant that, when asked whether he ever fabricated calls, NE#1 responded: "not that I can remember." OPA considers this response to be concerning. You either fabricated calls or did not. NE#1's answer included a qualifier that does not foreclose the possibility that he has made up calls but simply does not "remember" doing so.

The job of a patrol officer is perhaps the most important single role in the entire police department. A patrol officer responds to emergent calls and is the first line of interaction with the community. Patrol officers must perform their roles sufficiently not just to combat crime, protect public safety, and build community trust and confidence, but also to support their fellow officers. Especially now when patrol staffing has decreased, it is even more important that every individual officer works as hard as possible to keep the Department moving forward. NE#1 did not do so here. To the contrary, it appears that he actively avoided work and failed to meet the baseline requirements expected of patrol officers. OPA finds this to be problematic, disappointing, and inconsistent with policy.

For these reasons, OPA recommends that this allegation be Sustained.

Recommended Finding: **Sustained**

#### **Named Employee #2 - Allegations #1**

##### ***5.002 – Responsibilities of Employees Concerning Complaints of Possible Misconduct 5. Supervisors Will Investigate and Document Certain Allegations of Misconduct***

The Complainant said that he reported to supervisors, including NE#2, NE#3, and NE#4, that NE#1 was engaging in ongoing serious misconduct. He stated, however, that none of those supervisors took action on his complaints or referred his allegations to OPA.

NE#2 denied that the Complainant ever reported to her in 2014 or 2015 that NE#1 was creating fictitious calls or provided her with documentation indicating that NE#1 was engaged in serious misconduct. She believed that there was ongoing animosity between the Complainant and NE#1. She recalled that, in 2019, the Complainant once came to her "ranting" about NE#1. As she did not supervise the Complainant or NE#1, she informed him that he should speak with his direct supervisor, NE#4, and made sure that he did so. She noted that the Complainant filed this complaint shortly after he had received a PAS entry from NE#4. NE#2 felt that this may have been the catalyst for him filing a complaint against her and the other supervisors.



NE#3, like NE#2, denied that the Complainant ever reported to him in 2014 or 2015 that NE#1 was creating fictitious calls or provided him with documentation establishing that conduct. He said that, had been told this information, he would have gone right to his chain of command and/or to OPA. NE#3 said that he was not aware of NE#1 engaging in serious misconduct. He recalled that, when he supervised the Complainant, he once had to counsel him for sleeping on duty. He said that he raised this issue with the then Lieutenant and it was handled internally.

As discussed more fully below, NE#4 confirmed that the Complainant complained to him in 2019 and said that he referred this complaint to EEO.

Ultimately, OPA finds by a preponderance of the evidence that, while the Complainant may have raised general concerns about NE#1, he did not notify NE#2 or NE#3 that NE#1 was allegedly fabricating calls or provide them with documentary evidence of this. In reaching this finding, OPA notes that it cannot discern any motive for why two supervisors would fail to report this conduct. Indeed, both NE#2 and NE#3 have made numerous OPA complaints concerning other employees during their careers as a function of the roles as supervisors. Moreover, the evidence conclusively establishes that NE#2 did, in fact, take action when the Complainant made allegations against NE#1 in 2019. In addition, OPA deems it very possible that the Complainant did not provide any documentary evidence to NE#2 and NE#3, especially since he declined to provide the same evidence to OPA during this investigation, even after being asked to do so.

For these reasons, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#2 and NE#3.

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

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

***5.002 – Responsibilities of Employees Concerning Complaints of Possible Misconduct 6. Employees Must Otherwise Report Misconduct***

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)**

**Named Employee #3 - Allegations #1**

***5.002 – Responsibilities of Employees Concerning Complaints of Possible Misconduct 5. Supervisors Will Investigate and Document Certain Allegations of Misconduct***

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)**



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**Named Employee #3 - Allegation #2**

***5.002 – Responsibilities of Employees Concerning Complaints of Possible Misconduct 6. Employees Must Otherwise Report Misconduct***

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)**

**Named Employee #4 - Allegations #1**

***5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5. Supervisors Will Investigate or Refer Allegations of Policy Violations Depending on the Severity of the Violation***

NE#4 told OPA that he recalled speaking with the Complainant in 2019 about NE#1. He said that the Complainant referenced that his work environment was “hostile” and involved “harassment.” NE#4 told OPA that he twice asked the Complainant if he wanted to make a complaint and the Complainant said no. However, given the terminology used by the Complainant and NE#4’s concern for the Complainant’s welfare, NE#4 referred the Complainant’s allegations to EEO. He believed that, in doing so, he satisfied the requirement to investigate, document, and refer potential misconduct.

OPA agrees with NE#4 that, by referring this matter to EEO, he satisfied the requirements of this policy. Indeed, after conducting an intake interview with the Complainant, the then EEO Sergeant appropriately decided to make an OPA referral. Accordingly, the process worked as designed and this OPA investigation ensued.

For these reasons, OPA recommends that this allegation be Not Sustained – Lawful and Proper.

Recommended Finding: **Not Sustained (Lawful and Proper)**