



CLOSED CASE SUMMARY

ISSUED DATE: NOVEMBER 3, 2020

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0304

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 Standards and Duties - 15. Employees Obey any Lawful Order Issued by a Superior Officer	Not Sustained (Unfounded)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001 Standards and Duties - 15. Employees Obey any Lawful Order Issued by a Superior Officer	Not Sustained (Unfounded)

EXECUTIVE SUMMARY:

The Complainant alleged that the Named Employees violated a direct order when they discussed the substance of Named Employee #2's OPA interview.

SUMMARY OF INVESTIGATION:

The Complainant in this case was also the complaining party in another case involving an SPD Sergeant – Named Employee #1 (NE#1). In that prior case, the Complainant alleged that NE#1 was unprofessional towards her and treated her disparately. Named Employee #2 (NE#2) was a witness. The Complainant later alleged that the Named Employees discussed the substance of NE#2's OPA interview, even though they were aware that they were prohibited from doing so, and that this allowed NE#1 to be more fully prepared for his own interview. The Complainant contended that this violated policy as it was contrary to a direct order to keep the contents of their interviews confidential during the ongoing OPA investigation. OPA accordingly initiated this case.

OPA interviewed both of the Named Employees. NE#1 denied that he ever met with NE#2 specifically to discuss an OPA interview. He said that, when working business emphasis shifts, they would usually only meet to discuss work-related issues. NE#2 recalled that, after her OPA interview in the prior case, she was assigned to work a business emphasis shift. She was initially partnered with another officer, but that officer told her that he was working with someone else and that she should contact NE#1. She said that she recalled receiving an MDT message from NE#1 that read: "meet me." She said that she met NE#1 at an Outdoor Research store. At that time, he told her that she would be working alone, and he gave her an assignment for the day. She said that NE#1 then asked her: "how was OPA?" She took this as him generically asking her how she was doing, not an attempt to obtain details concerning the interview. NE#2 told OPA that she responded to NE#1 by saying: "the usual." NE#1 did not ask her any further questions and they did not discuss the substance of the interview.

Based on NE#2's account, OPA searched for MDT messages between NE#1 and NE#2. None could be found, including none that included the statement: "meet me." OPA also reviewed both of the Named Employees' Department cell phones and no text messages were found.



OPA re-interviewed NE#2 to clarify how she received the message from NE#1. She said that it could have been a text or voicemail and she did not recall. She could not find the message.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 Standards and Duties - 15. Employees Obey any Lawful Order Issued by a Superior Officer

SPD Policy 5.001-POL-15 requires that Department employees obey any lawful order issued by a superior officer. The failure to do so constitutes insubordination. This includes the order issued by OPA, under the authority of the Chief of Police, to not discuss the substance of interviews during ongoing investigations.

OPA's investigation indicated that the Named Employees did not, in fact, discuss the substance of NE#2's OPA interview. While NE#2 indicated that NE#1 asked her "how was OPA," this could be construed and was construed by NE#2 to simply be purposed to determine whether she was doing okay. NE#2 explained that she did not believe that NE#1 was probing for information and, regardless, she did not provide protected information to him. While the timing of NE#1's purported "meet me" message to NE#2 was odd, this does not, in and of itself, establish improper motive or misconduct on his part.

Ultimately, given the totality of the evidence, OPA finds an insufficient basis to include that either of the Named Employees violated a lawful order. As such, OPA recommends that this allegation be Not Sustained – Unfounded as against both NE#1 and NE#2.

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

Named Employee #2 - Allegation #1

5.001 Standards and Duties - 15. Employees Obey any Lawful Order Issued by a Superior Officer

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)**