



CLOSED CASE SUMMARY

ISSUED DATE: JANUARY 28, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0517

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain	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 used her position for personal gain when she sent an official letter to the City Council criticizing protest activities that took place near her private residence.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 - Standards and Duties 13. Employees Shall Not Use Their Position or Authority for Personal Gain

On August 1, 2020, a group of approximately 100 demonstrators associated with the "Every Night March" traveled to the personal residence of the then-Chief of Police, who is referred to here as Named Employee #1 (NE#1). This was part of a broader demonstration which involved similar groups demonstrating outside the homes of the Mayor of Seattle as well as various Seattle City Councilmembers. Those gatherings were nonviolent, and protesters dispersed provided that City officials stated their support for the movement. However, on some occasions, demonstrators who went to City officials' homes wrote messages on or around the residences that included insults and profanity. In subsequent news reports, the participants of the demonstration that went to NE#1's home stated that their intent had been to "make some noise" in support of the Black Lives Matter movement, and to question NE#1 outside her home about SPD's response thereto.

A group of NE#1's neighbors prevented the demonstrators from marching to NE#1's home. Based on news reports, some of NE#1's neighbors were armed with firearms. There is no indication that NE#1 participated in this activity and she was not present at or near her home at the time. The Snohomish County Sheriff, in whose jurisdiction NE#1 lives, stated that the protest was reported to his office. The demonstrators largely dispersed by the time that deputies arrived, and no police action was taken by the Snohomish County Sheriff's Department.

The next day, August 2, 2020, NE#1 transmitted a letter to the Seattle City Council. The letter, which carried the subject line "Intimidation of Public Officials and their Employees," described the incident as NE#1 viewed it. In the



letter, she stated that her residence was “targeted by a large group of aggressive protesters” the previous evening. She said that her neighbors “were successful in ensuring the crowd was not able to trespass or engage in other illegal behavior in the area, despite repeated attempts to do so.”

The letter urged the Councilmembers to “forcefully call for the end of these tactics,” including “violence and intimidation.” NE#1 also stated her concern that should elected officials not do so, the result would be “a new way of doing business by mob rule here in Seattle[.]” In context, NE#1’s concerns appeared directed both at the protest the night previous, as well as other incidents in Seattle to which SPD had been called to respond. NE#1 noted that the Snohomish County Sheriff’s Department, not SPD, was “monitoring the situation.” She signed the letter with her name and official title. The letter was posted to the SPD Blotter and reported in local media.

Following media reports, the Complainant and other members of the public contacted OPA. Generally speaking, their complaints focused on NE#1’s characterization of the demonstrators near her home, the actions of NE#1’s neighbors, and NE#1’s decision to transmit the letter using City resources and her doing so in her official capacity. OPA interpreted these complaints to be alleging misuse of NE#1’s position for personal gain.

Pursuant to SPD Policy 5.001-POL-13. Department employees are prohibited from using their position or authority for personal gain.

At the outset, OPA finds that NE#1’s statements were made in her official capacity as Chief of Police. The City Charter lays out the duties and responsibilities of that office, including acting as the “chief peace officer of the City,” responsible for “maintaining the peace and quiet” of the City. Seattle City Charter, Art. VI §5. Demonstrators went to NE#1’s residence precisely because she was the “chief peace officer” responsible for policing in Seattle and wanted to question her regarding the way she discharged those duties. Put differently, had NE#1 not been Chief of Police, her residence would not have been the site of a demonstration.

In determining that NE#1 was acting in her official capacity, OPA also concluded that she was not using her position for personal gain. Rather, NE#1 was commenting in her official capacity on a matter of public safety, which is a matter of public concern. *See Clairmont v. Sound Mental Health*, 632 F.3d 1091, 1104 (9th Cir. 2011). Moreover, as Chief of Police, NE#1’s duties were inextricably bound up in maintaining public safety in Seattle generally. Notably, NE#1’s comments were intended to deliver the message that demonstrations of the type at issue were detrimental to the public safety and efficient governance of Seattle. Moreover, there is no indication, and the Complainants offered no evidence to the contrary, that NE#1 directed SPD resources to responding to the demonstration at her home.

In reaching this finding, OPA takes no position on NE#1’s decision to make the statements in question and the content of those statements. Indeed, there is significant public debate about whether certain demonstration tactics are effective, prudent, or even ethical, and reasonable observers’ conclusions and interpretations of such actions will differ sharply. However, whereas here it was within NE#1’s official duties to exercise judgment and responsibility with respect to such matters and within her rights to articulate this publicly and in her professional capacity, policy did not prevent her from doing so.

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

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