



## ***CLOSED CASE SUMMARY***

ISSUED DATE:     APRIL 16, 2021

FROM:             DIRECTOR ANDREW MYERBERG  
                      OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER:     2020OPA-0623

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

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)
# 2	5.001 Standards and Duties 10. Employees Shall Strive to be Professional	Not Sustained (Inconclusive)

***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 may have engaged in criminal harassment of another officer and that the Named Employee's behavior towards that other officer was unprofessional.

### **SUMMARY OF INVESTIGATION:**

OPA received two complaints concerning the conduct of Named Employee #1 (NE#1). Both complaints asserted that NE#1 had been harassing another officer – referred to here as the Subject. The first complaint, which was filed on September 18, 2020, listed a former SPD officer – referred to as Witness Officer #1 (WO#1) – as the complaining party. The second complaint, which was filed on September 24, 2020, was submitted anonymously. The second complaint was written in a manner that suggested that it was filed by an officer. After receiving these complaints, OPA initiated an investigation.

OPA contacted WO#1 given that he was listed as a complainant. During this phone call, WO#1 said that he did not file an OPA complaint and expressed surprise that he was believed to be a complainant. He told OPA that that did not see any interactions between NE#1 and the Subject that he felt rose to "harassment"; however, he did feel that NE#1 was, at times, "manipulative" concerning her. He explained this as NE#1 sometimes trying to elicit information about the Subject from other officers without being totally clear of what the actual purpose of his questions were.

OPA also interviewed the Subject. She said that she was involved in a dating relationship with NE#1 for a period of time, but it ended. During their relationship, NE#1 was pursuing a divorce from his then-wife. He also lived with the Subject for a period of time. Both officers were going through field training rotations, having just graduated from the police academy. She said that NE#1 had struggles, caused, at least in part, by personal stress. He ended up taking a break from SPD. At that time, she made the decision to pause their relationship and felt that they would be better as



friends. NE#1 did not agree with the decision to break up and would frequently question her about it. She found these back and forth exchanges to be exhausting.

Interactions, both in person and over phone/text, became more strained between them. She ultimately concluded that remaining in close contact with NE#1 was not advisable. She recalled an incident in which he followed her to her home and into her secured garage. He told her that he wanted to speak her. She was not scared of him at the time but was annoyed. She ended up speaking with him to get it over with. On another occasion, she tried to leave his home and he stood behind her car preventing her from doing so. She called the police. This second incident was investigated under 2020OPA-0541. Lastly, NE#1 left her a voicemail that was strange in which he purported to be checking up on her. When she called him back, he said that he was going to report that she was “struggling” to the Department’s Wellness Unit. The Subject denied that she was “struggling” and felt that this was created by NE#1. He later sent her some texts that she described as “overly theatrical” and she did not respond to.

The Subject said that she did not recall telling anyone about what was going on between her and NE#1. She said that she did not file this complaint and she did not ask anyone to do so on her behalf. She described the contents of the complaint and the facts of this incident to be “embarrassing.”

When asked whether NE#1 “harassed” her, the Subject said: “I—I guess I never saw it that way, like until I was, like, made aware of this stuff, um, I—I don’t think I ever thought of it as being—I don’t think I knew what to think. I don’t think I ever thought of it as being harassed.” She told OPA that NE#1’s conduct had not affected her professionally, aside from her needing to participate in OPA investigations. With regard to her personal life, she said that sometimes she needed to be extra-aware of her surroundings if she was somewhere that she could run into NE#1. However, she stated that she would not be surprised by anything NE#1 did at this point. The Subject did not retain any of the emails, voicemails, texts, or other correspondence between herself and NE#1.

Lastly, OPA interviewed NE#1. He confirmed that he and the Subject started dating when they were student officers. He said that they dated for a period of months until the Subject ended the relationship. He said that she did so because of personal issues ongoing in her life and that he wanted to respect her decision and give her space, even if he did not agree with it. He said that, though their relationship ended, they still would engage romantically off and on. He wanted to get back together and believed that she entertained the idea. For several months he continued to raise this idea. However, the Subject never made the decision to move in that direction.

He recalled that their relationship became strained after the incident investigated in 2020OPA-0541. He subsequently blocked her number from his phone and intended not to communicate with her further. However, at some point thereafter, they reconnected. He said that she left him multiple voicemails and relayed that she was “struggling” with personal issues. These were the same issues that had caused their relationship to end, at least in part. He called her back and offered to put her into contact with the Wellness Unit. She refused his assistance. This conversation did not go well, and he decided again to break off contact. NE#1 denied that he offered the option of the Wellness Unit as a threat.

NE#1 denied any recollection of following the Subject into her secured garage. He also denied the Subject’s description of the incident in which he stood behind her car. He said that his conversations with the Subject about rekindling their relationship were not forced on her, even though they occurred on multiple occasions. He affirmed that he did not harass the Subject and said that he was concerned by this allegation. He said that, on one occasion, the Subject told him that their conversation was making her uncomfortable. She further told him at that time that she believed he was being “manipulative.” That was the last time they spoke.



**ANALYSIS AND CONCLUSIONS:**

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

***5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy***

The Complainant alleged that NE#1 engaged in the ongoing harassment of the Subject. If true, this would constitute a violation of law and would thus be contrary to SPD Policy 5.001-POL-2.

When considering the elements of harassment under the RCW, there is insufficient evidence to establish that NE#1 violated the law. Moreover, NE#1 denied doing so and, even under the Subject's accounting of what occurred, she is equivocal as to whether his conduct was criminal in nature. Certainly, if NE#1 engaged in the conduct attributed to him, he would have acted inappropriately and unprofessionally; however, proving criminality requires significantly more evidence. This is simply not present here.

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

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

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

***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.)

While there is insufficient evidence to establish that NE#1 engaged in criminal conduct, whether he was unprofessional is a much closer call. As discussed above, if the Subject's allegations concerning NE#1's behavior were proven to be true, OPA would almost certainly find that he was unprofessional. However, NE#1 denies virtually all of the allegations made by the Subject and characterizes their interactions completely differently. The only independent witness, WO#1, felt that NE#1 could be "manipulative" in the manner he sought to learn information about the Subject, but he did not relay to OPA any incidences of harassing or unprofessional conduct on NE#1's part.

Ultimately, the disputes of fact and lack of independent witnesses prevents OPA from reaching a determinative finding on this allegation. This is not to minimize what the Subject related experiencing but is simply a function of the burden of proof that must be applied by OPA. For these reasons, OPA recommends that this allegation be Not Sustained – Inconclusive.

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