



## ***CLOSED CASE SUMMARY***

ISSUED DATE: APRIL 21, 2021

FROM: DIRECTOR ANDREW MYERBERG  
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0701

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

Named Employee #1

Allegation(s):		Director's Findings
# 1	SPD Policy 5.001 Standards and Duties 13, Employees Shall Not Use Their Position or Authority for Personal Gain	Not Sustained (Training Referral)

***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 used his position for personal gain.

### **SUMMARY OF INVESTIGATION:**

Named Employee #1 (NE#1) was off duty when he received a phone call from a friend. The friend said that his ex-wife – who had an ongoing meth addiction and who had been involved in a number of DUIs, inappropriately took their child from a grandparent's home. The friend stated that the wife did not have solo visitation rights and was not permitted to take the child like that. The friend could not find the wife and was worried for the child's safety. The wife was believed to be driving a car belonging to her boyfriend.

NE#1 then called 911 and spoke with Dispatcher #1. NE#1 gave Dispatcher #1 his name and badge number asked him to run a search through the DAPS (Driver and Plate Search) database. NE#1 gave Dispatcher #1 the name of the boyfriend and a description of the boyfriend's car. Dispatcher #1 then provided NE#1 with the license plate number and the boyfriend's address. After this information was conveyed, NE#1 told Dispatcher #1 that he was off duty and that a friend of his had reported the friend's child being taken by the ex-wife, who NE#1 described as "a habitual narcotics and DUI offender." NE#1 said that the child, who had been taken from a grandparent's home, was potentially endangered and was believed to be headed into Seattle.

NE#1 subsequently called 911 again on a recorded line. He provided his badge number and reported "child endangerment, kidnapping, based on a court order." He gave the dispatcher the boyfriend's address. He disclosed that he was off duty and what he learned from the friend. He told the dispatcher: "this is very gray." He gave additional information concerning the boyfriend and the ex-wife. He further noted that the friend was on his way to the Southwest Precinct (where the boyfriend's home was located). NE#1 said that he did not want the friend trying to go to the boyfriend's home and that he believed the friend had located it. Several minutes later, NE#1 informed the dispatcher that the friend had arrived at the Southwest Precinct.



The friend spoke with an officer at the Southwest Precinct. He mentioned being friends with NE#1 and stated that he was concerned about the welfare of his child. He noted that the child had been taken from a grandparent's home by the ex-wife. The officer told the friend that they did not dispatch officers from the precinct and that he needed to call 911. The officer noted that this information had also been relayed to NE#1 by a dispatcher. The officer told the friend that they would not be able to take the child from the boyfriend's home and that his best bet was to go through the courts and/or CPS.

Other officers were later dispatched to perform a welfare check at the boyfriend's home. They spoke to both the boyfriend and the ex-wife and were able to verify that the child was not harmed and appeared safe. The officers departed without taking any law enforcement action.

After getting off the phone with NE#1, Dispatcher #1 felt that it may have been improper for him to have provided information to NE#1. Dispatcher #1 believed that this was the case because NE#1 was off duty at the time and was seeking the information for a friend and not in the course of his official law enforcement responsibilities. Dispatcher #1 notified his supervisor. The supervisor – who is the Complainant in this case – notified a Lieutenant in the Patrol Operations Bureau (where NE#1 is assigned). That Lieutenant contacted NE#1's direct supervisor. After hearing what occurred, NE#1's direct supervisor recommended that the incident be documented and an OPA referral was made. OPA subsequently initiated this investigation.

As part of its investigation, OPA reviewed the 911 call recordings. OPA also interviewed NE#1. He stated that his friend called him when he was off duty. The friend said that his child had been taken by his ex-wife from a grandparent's home and that the wife did not have solo non-observed custody. NE#1 asked the friend whether he had gotten his local law enforcement agency involved. The friend said no and disclosed that the ex-wife was believed to be living with her boyfriend in Seattle and may have gone there with the child. The friend told NE#1 that both the ex-wife and the boyfriend were habitual heroin and meth users. The friend expressed concern for the child's safety and NE#1 shared that concern.

He said that he called dispatch to see whether he could get an address of the boyfriend and the license plate of the boyfriend's vehicle. He then called the Southwest Precinct to relay this information so that officers could respond if appropriate. At that point, NE#1 believed that there was likely probable cause for domestic violence kidnapping. He denied that he violated Department policy. He said that he did nothing for personal gain and, instead, acted based on a need to protect an endangered child. He recognized that he only had access to the information in question because of his status as a law enforcement officer but said that he used the information appropriately to protect the child.

#### **ANALYSIS AND CONCLUSIONS:**

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

##### ***SPD Policy 5.001 Standards and Duties 13, Employees Shall Not Use Their Position or Authority for Personal Gain***

SPD employees are prohibited from using their position or authority for personal gain. (SPD Policy 5.001-POL-13.)

OPA has found that where officers use their law enforcement access for personal reasons, this constitutes a violation of policy. For example, OPA recently found that a civilian employee who accessed police reports to assess whether her partner's colleague was engaged in criminality acted contrary to policy (see 2020OPA-0455). Similarly,



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OPA found that an officer who ran her own license plate through ACCESS was not permitted to do so (see 2020OPA-0235). In these cases, the determinative question is whether the employees had access to the information solely due to their employment status and then whether they used the information for a personal reason.

Here, NE#1 admittedly only had access to the information in question because he was employed as a police officer. Moreover, he used the information for a personal reason; namely, to assist his friend in locating the child. However, OPA finds that the circumstances of this case are different than those in the precedent cases. First, NE#1 did not access any protected databases to obtain the boyfriend's license and address information. Second, NE#1 disclosed that he was off duty and why he was seeking the information to all of the SPD employees he spoke to, even if that disclosure was delayed to Dispatcher #1. Third, NE#1 was responding to an ongoing crime. Fourth, the benefit to NE#1 here was the least significant and his acts were the most clearly proposed to benefit others when evaluating this case with the precedent cases.

NE#1 believes that he did the right thing at the end of the day and OPA does not disagree that the child's safety was of paramount importance. However, SPD rules concerning the use of position for personal gain are in place for a reason. When NE#1 acted on the friend's behalf, he had not seen the custody orders and had no information conclusively verifying what he had been told. While he believed his friend, he could have possibly involved himself in a civil or criminal matter, potentially negatively. Moreover, NE#1's requests for information while off duty clearly made Dispatcher #1 feel uncomfortable and put Dispatcher #1 in the difficult place of reporting NE#1 to SPD supervisors. In addition, there were other steps NE#1 could have taken apart from seeking the information on his own. As an example, NE#1 could have directed the friend to call 911 just like he did. As another example, he could have screened this matter with a supervisor to get additional guidance and to determine whether his seeking of the information was appropriate.

Given the unique facts of this case, OPA does not find that a Sustained finding is warranted. Again, OPA finds NE#1's intent, which was to ensure the safety of the child and not to benefit himself, to be compelling. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1 should be reminded of the parameters of the Department's policy concerning the use of his position for personal gain. NE#1 should be avoided in engaging in acts such that those that occurred in this case in the future. Moreover, if face with this type of incident again, he should notify a supervisor and seek approval before moving forward to obtain information. This training and counseling should be documented, and this documentation should be maintained in an appropriate database.

Recommended Finding: **Not Sustained (Training Referral)**