



CLOSED CASE SUMMARY

ISSUED DATE: JULY 12, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0723

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	Sustained
# 2	5.002 - Responsibilities of Employees Concerning Alleged Policy Violation 8. Employees Will Report Certain Events	Not Sustained (Unfounded)
# 3	5.001 - Standards and Duties 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained (Unfounded)

Imposed Discipline

Suspension Without Pay – 3 days

Named Employee #2

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

It was alleged that both Named Employees violated the law and acted unprofessionally. It was further alleged that Named Employee #1 failed to timely notify her chain of command that she was the subject of a criminal investigation.

SUMMARY OF INVESTIGATION:

A. OPA Referral and Criminal Investigation

Named Employee #1 (NE#1) and Named Employee #2 (NE#2) were married but, at the time of the incidents at issue in this case, were estranged from each other and were living apart. NE#1 is currently employed by SPD as a Parking Enforcement Officer. NE#2 was employed by SPD as a sworn detective but retired prior to the resolution of this case.

This case was initiated based on a referral to OPA by SPD's Investigations Bureau. The Investigations Bureau was informed by the Pierce County Sheriff's Office (specifically the Edgewood Police Department) that, on November 20, 2020, Pierce County officers responded to a call placed by NE#2 regarding a domestic incident. At that time, NE#2



notified the officers that NE#1 had placed a GPS tracking device on his vehicle unbeknownst to him and without his consent. NE#2 told the officers that he confronted his wife and she admitted to placing the GPS tracker. In conversations with officers, NE#2 initially asserted that NE#1's conduct constituted stalking and harassment. He later clarified, however, that he understood that it likely did not meet the elements of either crime and he said that he just wanted to make sure that the matter was documented.

After receiving this notification from the Investigations Bureau, OPA commenced its investigation. As part of that investigation, OPA sent a contractual notice to NE#1 informing her of the complaint. After receiving this notice, NE#1 contacted Pierce County to give a statement.

She told Pierce County that, up until receiving the contractual notice from OPA, she was unaware that a criminal report had been made against her. She contended that NE#2 had engaged in acts that constituted extortion and sought to have that conduct criminally investigated. NE#1 confirmed that she placed a GPS tracker on NE#2's vehicle on November 10, and that he discovered that she did so on November 12. That same day and in response to her actions, he told her that she would need to write an email to both of their divorce attorneys stating that she "did not want anything in the divorce." He said that, if she did not do so, he had an appointment scheduled with OPA staff and would file a complaint against her.

NE#1 informed Pierce County that, on November 12, 2020, she sent an email to both divorce attorneys stating the following:

I would like to conclude [NE#2's] and My divorce. I just want this to be over. I do not want the equity in the [private address redacted] home. I do not want anything from [NE#2] or the home. I will sign off on the deed to house. I would like for the dissolution to be completed by the end of the week if possible. I know this is a change but I want to go on with my life and stop the fighting. I will sign paperwork as soon as today. Thank you for your consideration and time.

NE#1 provided further email correspondence from her attorney, in which the attorney responded to this email expressing his confusion and disagreement with NE#1's decision. Later that day, NE#1 wrote another email to her attorney stating the following: "If you have time to talk please call me. It is wrong and rash but I did something I shouldn't have and now he's basically blackmailing me." NE#1 stated that she texted NE#2 on November 19, 2020, indicating that she would not sign divorce papers ceding assets. She wrote the following:

"I see I was a fool again, once more...you can go to OPA, if that's what U want to do. I will live with it and whatever decision they make. My Dad said I can always come home. I'm not signing the papers saying I get nothing. I'll be over tonight to grab some more stuff."

She stated that, the following day, NE#2 filed the police report with Pierce County.

NE#1 provided Pierce County with the email exchanges with the divorce attorneys. She further provided the text message exchange between her and NE#2 discussed above. Lastly, she provided evidence of their joint assets.

Pierce County did not arrest NE#2 but forwarded the case to a prosecuting attorney. The prosecuting attorney ultimately did not file charges against NE#1, noting that no crime had appeared to have been perpetrated. The



prosecuting attorney further formally declined charges against NE#2, stating that the case did not meet the office's filing standards.

B. OPA Investigation

Once the prosecuting attorney declined to file charges against either NE#1 or NE#2, the case was returned to OPA and this investigation was recommenced. OPA's investigation included reviewing the Pierce County criminal investigation into the allegations made by of both Named Employees, including the evidence provided by NE#1. OPA interviewed the Pierce County officer who took NE#2's report, as well as the detective who investigated NE#1's allegations.

The Pierce County officer told OPA that, after reviewing the facts presented by NE#2, he did not believe that a crime had been committed by NE#1. In reaching this conclusion, he pointed to the following: it was the first time NE#1 had placed the GPS device on the car; she had a legal ownership claim to the car because she and NE#2 were still legally married at the time; and her actions did not rise to the legal definition of domestic violence stalking because it was a one-time incident.

The Pierce County detective told OPA that he interviewed NE#1 and, given her statements, he felt that there was a sufficient basis to list NE#2 as a suspect of extortion. He then forwarded the case to the prosecuting attorney.

OPA further interviewed NE#1. She confirmed that she purchased a GPS tracker because she believed that NE#2 was having an affair and because she wanted to make sure that he did not follow her to her new home. She said that she placed the GPS tracker on their vehicle on November 10. She stated that, while only NE#2's name was on the title and while he used the vehicle the majority of the time, she considered it joint property. She said that she drove the vehicle sometimes and had access to a spare key. She recalled that, on November 12, NE#2 confronted her in the kitchen about the GPS tracker. He was agitated and told her that placing the GPS tracker on his vehicle was a crime and that he had a meeting with the OPA Director in one hour. NE#1 begged him not to notify OPA and the Department as it would negatively affect her job. She also believed what NE#2 was telling her about her conduct being criminal given his status as a police officer. NE#1 later noted that, when considering NE#2's statements after the fact, she did not believe he actually had an appointment at OPA and that he said that to scare her.

He told her that she needed to write an email to their divorce attorneys telling them that she did not want any assets from the divorce. When NE#1 said that she wanted to speak with her attorney, NE#2 told her that there was not time. He pressured her until she ultimately wrote the email and sent it to the attorneys. She believed that this was extortion and blackmail, and she eventually notified her attorney of this. She later told NE#2 that she would not agree to relinquish her claims to assets. One day later, he filed a police report against her. She opined that NE#2 did so to harm her and to cause her to lose her job.

When asked about her understanding of SPD's professionalism policy, NE#1 initially stated that she did not understand it and then opined that it did not apply to her as she was not a sworn employee. She ultimately posited that her conduct was not unprofessional as it was "marital business between husband and wife in another county." She further opined that her conduct was permissible based on what she was going through at the time and that the public would do the same thing in her situation.



NE#1 further denied violating the law. She stated that no charges were brought against her and that and she did not believe that her conduct was criminal.

NE#1 additionally stated that she did not know that she was formally alleged to have committed a criminal act until notified by OPA of this complaint. She did not self-report to a supervisor at that time. During questioning by her union representative later in her interview, she confirmed that her Captain was on the notification from OPA so her chain of command became aware of the alleged criminal conduct at the same time that she did.

Lastly, OPA sought to interview NE#2, but he left the employment of SPD during the pendency of this investigation. He declined to be interviewed and only stated via email that NE#1's claims constituted a "false allegation."

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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.)

As discussed more fully below, OPA finds that there is an insufficient basis to conclude that NE#1's conduct constituted an arrestable and chargeable crime; however, this is not the same as finding that her conduct was proper. As noted by the Pierce County officer, NE#1 was not found to have committed domestic violence stalking because, in part, it was only her first time engaging in this conduct. This is not the same as finding that her conduct was congruent with the law and community expectations.

OPA concludes that NE#1's conduct in placing a GPS tracker on a car that, while perhaps community property, was NE#2's vehicle and doing so with the intent to track his whereabouts was unprofessional. While NE#1 is not a sworn officer, the professionalism policy applies equally to her, despite her assertions to the contrary. SPD employees – whether sworn or civilian – are expected to meet a higher standard of conduct than other community members. This is due to the great authority held by SPD employees and the need to ensure that the Department and its personnel stays above reproach and is trusted by the community.

Moreover, that this conduct occurred off-duty and was between a husband and wife does not remove it from the ambit of professionalism policy. To be clear, OPA has jurisdiction over all SPD employees and all conduct engaged in by those individuals. This applies regardless of whether the employees were on or off-duty at the time. For example, in a recent case (see 2020OPA-0702), OPA found that an officer who drove a taskforce vehicle by where she thought her estranged wife was staying with a new partner was deemed unprofessional. This was the conclusion even though the conduct was between a married couple and occurred off-duty. This informs a similar result here.

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

Recommended Finding: **Sustained**



Named Employee #1 - Allegation #2

5.002 - Responsibilities of Employees Concerning Alleged Policy Violation 8. Employees Will Report Certain Events

SPD Policy 5.002-POL-8 requires employees to report to a supervisor when: “They are the subject, or they believe they may be the subject of a criminal investigation, criminal traffic citation, arrest, or conviction.” The reporting must occur as soon as practical. (SPD Policy 5.002-POL-8.)

Here, NE#1 indisputably did not report that she was the subject of a criminal investigation to her chain of command. However, in response to questioning from her union representative, she confirmed that she did not know about this until she received a notice of complaint from OPA and that her chain of command was copied on that notification. As such, she contended that her chain of command became aware of the criminal investigation at the same time that she did, and she therefore had no independent duty to report.

When evaluating these facts, OPA concurs that NE#1’s failure to personally inform her chain of command of the criminal investigation did not violate policy. Again, the chain of command was aware of the criminal investigation and any notification would have been moot.

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

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

Named Employee #1 - Allegation #3

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

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. NE#2 alleged that NE#1 engaged in stalking and harassment when she placed a GPS tracker on his vehicle in order to monitor his whereabouts.

As discussed above, NE#1 was not arrested, and no charges were sought by Pierce County or filed against her by the prosecuting attorney. As the Pierce County officer noted, there was an insufficient basis to arrest and charge NE#1. This was because: it was the first time NE#1 had placed the GPS device on the car; she had a legal ownership claim to the car because she and NE#2 were still legally married at the time; and her actions did not rise to the legal definition of domestic violence stalking because it was a one-time incident.

OPA gives deference to the determinations reached by both Pierce County and the prosecuting attorney and declines to substitute its judgment for theirs. Accordingly, OPA finds that criminality was not established on NE#1’s part and, as such, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #1

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

If NE#1’s allegations could be proven to be true, OPA would conclude that NE#2 was both unprofessional and committed a criminal act. Specifically, it would violate SPD’s professionalism policy and criminal law if NE#2 extorted



NE#1 to cede assets that she had a lawful right to by threatening to file an OPA complaint against her. It would further have been unprofessional if NE#2 falsely contended that he had a meeting with OPA staff when no such meeting was scheduled.

When assessing this matter, OPA determines that, while a close call, there is insufficient evidence to establish either unprofessionalism or the violation of law. On one hand, NE#1's account of NE#2's malfeasance and his statements to her is hearsay. There is no audio recording of what they discussed and, thus, no definitive evidence establishing that NE#2 told her that he had a meeting with OPA staff, that he extorted her to write the email or else he would report her conduct, and that he wrote the email and forced her to send it. In addition, the sole evidence that documents communications between NE#1 and NE#2 – the text exchange – is not conclusive evidence of NE#2's misconduct. While NE#1's text references her refusal to take nothing and her accepting that NE#2 may go to OPA, there is no statement from NE#2 confirming his forcing her to do so or articulating any threat on his part.

The above being said and on the other hand, the timing of this incident and of NE#2's actions is suspicious and tends to support NE#1's account. For example, it seems unlikely that there was not a connection between NE#2 confronting NE#1 about the GPS tracker – which indisputably occurred on November 12 – and NE#1's sending of the email to the attorneys on that same day. Moreover, that NE#2 filed the report with Pierce County just one day after he received the text from NE#1 saying that she would not agree to cede assets also raises questions for OPA.

However, there is simply insufficient evidence to establish these allegations when applying the requisite burden of proof. Accordingly, OPA recommends that this allegation and Allegation #2 be Not Sustained – Inconclusive. OPA notes that this should not be construed as an exoneration of NE#2 but simply a recognition of the reality that the record simply cannot support the contrary finding.

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

Named Employee #2 - Allegation #2

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

For the same reasons as stated above (see Named Employee #2 – Allegation #2), OPA recommends that this allegation be Not Sustained – Inconclusive.

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