



CLOSED CASE SUMMARY

ISSUED DATE: MAY 1, 2024

FROM: DIRECTOR GINO BETTS, JR. 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2020OPA-0769

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties, 5.001-POL-11. Employees Shall Be Truthful and Complete in All Communication (Effective March 1, 2018)	Not Sustained - Inconclusive
# 2	5.001 – Standards and Duties, 5.001-POL-10. Employees Shall Strive to be Professional (Effective March 1, 2018)	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—an SPD assistant chief when the complaint was made—alleged that Named Employee #1 (NE#1) was untruthful and undermined public trust by providing false or misleading testimony during a civil deposition.

ADMINISTRATIVE NOTE:

On April 22, 2024, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

A. OPA Complaint

On December 24, 2020, the Complainant emailed an OPA complaint, writing that NE#1 provided dishonest testimony in a civil case. The Complainant attached a court order finding, among other things, NE#1 "willfully and deliberately gave false testimony that misled Plaintiffs" and gave "misleading testimony during his deposition."

OPA investigated the complaint, reviewing the computer-aided dispatch call report, in-car video, vehicle collision report, civil litigation documents, NE#1's cell phone record, Collision Review Board memorandum, Traffic Collision Investigation Squad case investigation report, and involved officer statement. OPA also interviewed NE#1.

B. Computer-Aided Dispatch (CAD) Call Report and In-Car Video (ICV)

On July 20, 2018, at 1:30 AM, a motor vehicle collision with unknown injuries was coded into CAD.

Around 1:29 AM, NE#1's ICV captured the following:



NE#1 approached a stoplight intersection, decelerated, and turned left. NE#1 accelerated but did not activate his patrol car's lights or sirens. NE#1 had the right of way, as no stoplights or stop signs were present. Community Member #1 (CM#1) drove into the roadway from NE#1's right.



NE#1's ICV captured CM#1's vehicle entering the roadway from the right.

As CM#1 entered the roadway, ICV captured braking sounds. NE#1 struck CM#1's driver's side. The ICV's time showed the collision happened at 1:29:34 AM. NE#1 shouted, "Oh, shit! Ah, fuck!" The ICV time displayed 1:29:59 AM when NE#1 reported the collision to dispatch.

Throughout NE#1's ICV, before the collision, indeterminate clicking sounds were recorded. What sounded like a cell phone chime was recorded around timestamp 1:28:58 AM.

C. Vehicle Collision Report

SPD's Traffic Collision Investigation Squad (TCIS) investigated the collision, and the Collision Review Board (CRB) reviewed the investigation.

NE#1's chain of command wrote a vehicle collision report, noting that NE#1 was headed to assist Witness Officer #1 (WO#1) on a traffic stop. The report indicated that NE#1 "attempted to brake but was unable to avoid the collision." The report noted that CM#1 was under the influence and had three passengers. A lieutenant and captain in NE#1's chain of command concluded that the collision was unpreventable, noting NE#1 had the right of way, CM#1 disregarded a stop sign, NE#1 and CM#1's proximity was too close to avoid a collision, and a large shrub partially obstructed NE#1's view of CM#1.

CRB found the incident preventable. The Complainant agreed with CRB's finding, concluding that NE#1 drove above the speed limit without activating emergency lights and sirens. The Complainant also concluded that NE#1's speed minimized CM#1's opportunity to clear the intersection after running the stop sign.



D. Civil Litigation

The collision triggered four lawsuits with the City of Seattle and NE#1 as defendants. Plaintiff's counsel, among other things, alleged that NE#1 (1) texted right before the collision and (2) knew about an investigation into the collision's preventability.

1. Texting Before the Collision

On February 26, 2020, during a deposition, NE#1 provided the following responses to plaintiff's counsel:

Q: Were you on your phone before the collision?

A: No.

Q: How do you remember that?

A: I was responding to a call.

Q: Right. I know you were responding to a call, but how do you remember that you weren't on your phone?

A: I was on my – I was responding to a call. I wouldn't have been on my phone.

Q: Any other reason why you weren't on your phone?

A: It was put away in my pocket.

NE#1's cell phone record showed that on July 20, 2018, NE#1 received two texts from his then-girlfriend (Community Member #2 or CM#2) at 1:28 AM, NE#1 texted CM#2 at 1:28 AM, and NE#1 texted CM#2 again at 1:29 AM. NE#1's cell phone records did not display seconds. Plaintiff's counsel alleged that NE#1 "provided self-serving, misleading testimony that he was 'not using' his cell phone at the time of the collision and could not have done so because it was buried in his pocket at the time of the crash. The phone records not only discredit [NE#1's] deposition testimony regarding his use of the phone at the time of the crash, [but] they also gravely call into question [NE#1's] judgment and decision-making at the time of the collision."

2. Knowledge About an Investigation into the Collision's Preventability

During NE#1's February 26, 2020, deposition, NE#1 provided the following responses to plaintiff's counsel:

Q: You don't know whether or not there was an investigation into the crash by the lieutenant, correct?

A: Yes.

Q: You testified that you don't know whether or not there was an investigation into the crash. Is that correct?

A: Correct.

Q: You don't know whether or not there were any findings about whether or not the collision was preventable or not preventable?

A: No, I don't know.

...

Q: You don't know what . . . they concluded about whether or not you could have prevented the collision, right?

A: No.



...

Q: It sounds like you haven't received any – even had the opportunity or been invited to discuss the collision with any supervisor, correct?

A. I haven't.

A September 5, 2019, CRB memorandum was emailed to NE#1. The memo indicated that CRB “reviewed the circumstances surrounding [NE#1’s] traffic collision on 7/20/2018 and found the collision to be Preventable.” The memo afforded NE#1 the opportunity to appeal CRB’s ruling.

E. Involved Officer Statement

NE#1 wrote a statement about the collision. In part, NE#1 wrote, “I noticed a vehicle enter the intersection into my lane of travel. I attempted to stop but was unable to and collided with the rear passenger door of the vehicle.”

F. OPA Interview

On April 5, 2024, OPA interviewed NE#1. NE#1 said he struck CM#1 while responding to WO#1’s traffic stop, which he thought involved a stolen vehicle. OPA played NE#1’s ICV seconds before the collision and noted clicking sounds. NE#1 acknowledged them, could not identify the source, and denied they were sounds of him texting. NE#1 acknowledged texting CM#2, saying, “I remember it was about a minute and a half before the collision.” NE#1 said his cell phone was inside his vest pouch before the collision. OPA noted that ICV time stamps, NE#1’s cell phone record, and CAD GPS showed NE#1 used his cell phone less than a minute—perhaps seconds—before the collision. NE#1 replied, “... I know my phone was in my pocket... the times, I can’t . . . I don't know that the time is lined up between T-Mobile and our MDT. I don't know that. But I know my phone was in my pocket.” NE#1 clarified he texted a minute before the collision while responding to WO#1’s location.

NE#1 said someone directed him to write a statement and diagram the collision, which he said was standard practice for officer-involved collisions. NE#1 said his chain of command and CRB reviewed his report but could not recall CRB’s findings about the crash. OPA noted that CRB and the Complainant found the collision preventable. NE#1 disagreed with that conclusion, saying CM#1 rolled through the stop sign. NE#1 denied recollection of receiving CRB’s September 5, 2019, emailed ruling but said he did not appeal it. OPA asked whether NE#1 opened the email. NE#1 said, “Well, I had to open it. I just don’t remember it.” NE#1 said he could not recall being directed to do anything else or hearing about the collision from his chain of command. OPA noted that NE#1 testified at deposition that he did not know about an investigation into the crash. NE#1 said he learned about a traffic investigation but thought the plaintiff’s counsel referred to a criminal or misconduct investigation.

NE#1 denied being distracted while driving and said he could not avoid the collision, citing CM#1 rolling through the stop sign and CM#1 being obscured by bushes.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 – Allegation #1

5.001 – Standards and Duties, 5.001-POL-11. Employees Shall Be Truthful and Complete in All Communication (Effective March 1, 2018)



The Complainant alleged that NE#1 gave false testimony at a deposition.

Employees shall be truthful and complete in all communication. SPD Policy 5.001-POL-11 (effective March 1, 2018). Under the Seattle Police Officer's Guild Collective Bargaining Agreement (SPOG CBA), a sustained complaint involving dishonesty "relating to the administration of justice" carries a presumption of termination. SPOG CBA article 3.1. In such cases, dishonesty is defined as "intentionally providing false information, which the officer knows to be false, or intentionally providing incomplete responses to specific questions, regarding facts that are material to the investigation." *Id.* Dishonesty means "more than mere inaccuracy or faulty memory." *Id.* For termination cases where "the alleged offense is stigmatizing to a law enforcement officer," an "elevated standard of review (i.e., more than preponderance of the evidence)" applies. *Id.*

During NE#1's deposition, NE#1 denied using his cell phone immediately before the collision. NE#1 said his cell phone was in his vest pocket when he struck CM#1. However, NE#1 acknowledged using his cell phone up to a minute and a half before the collision. ICV showed that the collision occurred at 1:29:34 AM. Even assuming the ICV time, the time displayed on NE#1's cell phone record, and real-time were synced—which, as discussed below, was not established by the evidence—NE#1 would have had about a 34-second window to text CM#2 before the collision, as NE#1's cell phone record showed his last text was sent at 1:29 AM, with no seconds indicated. Ultimately, whether NE#1 texted during this 34-second window is inconclusive. While NE#1 could have texted right before the collision, the evidence also suggests NE#1 could have texted up to 34 seconds before the collision. Although clicking sounds were captured seconds before the collision, those same sounds were heard throughout NE#1's driving, could have been caused by another source, and were not distinguishable.

Additionally, no evidence established that the times indicated on ICV and CAD were accurately synced with the real-time. While an SPD information technology (IT) employee told OPA that the time displayed on ICV is typically accurate and IT employees try syncing CAD and ICV times, she acknowledged seeing glitches and discrepancies of three or more minutes. Additionally, a police communications analyst told OPA that CAD times could be "slightly different" than those in the recording system or phone system data. Based on these accounts, OPA could not exclude the possibility that system times were not accurately synced with real-time.

Lastly, the plaintiff's counsel alleged that NE#1's reaction time before the collision suggested distracted driving. NE#1's ICV showed what appeared to be NE#1's limited reaction when CM#1 began crossing the road. While such a response may be consistent with distracted driving, it was also consistent with NE#1 having extremely limited to react because CM#1 was partially obscured by bushes and CM#1 either rolled through the stop sign or failed to yield to NE#1 when NE#1 had the right of way. Under these circumstances, whether NE#1 was texting right before the collision is inconclusive.

During NE#1's deposition, NE#1 denied knowing whether there was an investigation into the collision. NE#1 wrote a statement and drew a diagram, which he acknowledged was for a traffic investigation. However, NE#1 thought the question posed during his deposition referred to a criminal or misconduct investigation. NE#1 acknowledged he should have asked for clarification. NE#1 also denied knowing whether there were findings about the collision's preventability despite him being emailed CRB's September 5, 2019, ruling that the collision was preventable. NE#1's February 26, 2020, deposition occurred roughly five months after he was emailed CRB's ruling. NE#1 denied recalling the contents of that email.



NE#1's statement that he did not know about an investigation into the collision could be attributable to his misunderstanding of the question during his deposition. However, NE#1's statement that he did not know about any findings concerning the collision's preventability is questionable. On one side, CRB's ruling was adverse to NE#1, permitting him to appeal that ruling. NE#1 acknowledged he did not appeal. NE#1 also acknowledged that he must have opened the email. Yet, NE#1 claimed he could not recall the contents of the email. On the other side, apart from writing a statement and drawing a diagram for the traffic investigation, NE#1 appeared to have no other involvement and had little to no contact with his chain of command, TCIS, and CRB about it. It is also possible NE#1 opened this email but did not carefully read or concern himself with its contents. NE#1's deposition occurred nearly six months after he received an email about CRB's ruling. Under these circumstances, it is inconclusive whether NE#1 was dishonest about his knowledge of the investigation or its findings.

Accordingly, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**

Named Employee #1 – Allegation #2

5.001 – Standards and Duties, 5.001-POL-10. Employees Shall Strive to be Professional (Effective March 1, 2018)

It was alleged that NE#1 undermined public trust by giving false or misleading answers at a deposition.

Employees shall "strive to be professional." SPD Policy 5.001-POL-10 (effective March 1, 2018). Further, "employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers." *Id.*

For the reasons at Named Employee #1 – Allegation #1, there is insufficient evidence that NE#1 intentionally provided false or misleading information at his deposition.

Accordingly, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**