



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 1, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0128

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	Not Sustained (Training Referral)
# 2	5.001 – Standards and Duties 14. Retaliation is Prohibited	Not Sustained (Unfounded)
# 3	12.040-POL-3 Using Department Devices 2. Employees Use Devices in a Professional Manner	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:

It was alleged that the Named Employee engaged in repeated unprofessional and erratic behavior while the sergeant of the Background Unit, that he retaliated against a unit employee, and that he sent improper text messages to multiple unit employees.

SUMMARY OF INVESTIGATION:

This case stems from ongoing issues within the Background Unit and centers around the unit sergeant – Named Employee #1 (NE#1) – and several other unit employees. On February 25, 2021, there was a meeting held in which NE#1 discussed the concept of a social contract and asked members of the unit to not discuss their collective business with others. NE#1 went around the room and asked people who were part of the meeting to agree, focusing on one individual – referred to here as Witness Officer #1 (WO#1). WO#1 refused to agree, which resulted in a verbal conflict between him and NE#1, culminating in WO#1's refusal to go into NE#1's office when ordered to do so. NE#1 later filed an OPA complaint against WO#1 for insubordination and unprofessionalism, which was investigated under case number 2021OPA-0137. That investigation resulted in inconclusive findings against WO#1 based on discrepancies between the accounts of the involved parties.

Another unit employee – referred to here as Witness Officer #2 (WO#2) – made an EEO complaint against NE#1 citing gender discrimination (this allegation is outside of OPA's jurisdiction and was investigated by EEO). She alleged that NE#1 treated her improperly and threatened to transfer her from the unit repeatedly. She further asserted that NE#1 was unprofessional at the unit meeting, as well as in numerous other oral and written communications made with members of the unit. She cited to NE#1 referencing medical information of employees that was presumably confidential, using profanity, and discussing sexual escapes. WO#1 also spoke with EEO. He, like WO#2, contended that NE#1 was unprofessional during the unit meeting and made a number of inappropriate statements. He cited to



the demonstrations that occurred last summer and NE#1 acting erratically and using profanity to compel them to get dressed and ready to respond. Both WO#1 and WO#2 also referenced a text chain between NE#1 and unit employees where he made improper and unprofessional statements. As a result of these complaints, OPA commenced this investigation.

As part of its work on this case, OPA reviewed the EEO interviews given by WO#1 and WO#2 and read the various text messages and emails sent by NE#1. Lastly, OPA interviewed NE#1, WO#1, WO#2, and other witness employees.

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.)

OPA perceives there to be five discrete allegations of unprofessionalism on NE#1’s part, including: (1) he was unprofessional while readying his unit for a demonstration management response; (2) he spoke about his employees’ medical conditions; (3) he discussed other SPD employees’ struggles with alcoholism; (4) he engaged in erratic and disruptive behavior while the sergeant of the unit, including during his handling of the February 25 meeting; and (5) he sent texts that contained profanity and referenced unit employees having sex. Claims #1 through #4 are discussed below, while claim #5 is discussed in the context of Allegation #3, which OPA believes is the more appropriate policy section.

With regard to claim #1, NE#1 said that, at the time, he observed that a small number of officers was facing a significant group of demonstrators. He believed that his unit needed to respond immediately and were not moving as quickly as the exigency of the situation required. He acknowledged using profanity to tell them to get ready but said that it was warranted under the circumstances. There is insufficient information in the record to counter this explanation.

With regard to claim #2, OPA reviewed the emails sent by NE#1 that referenced medical information. They were all benign and discussed prognoses rather than diagnoses. OPA found no emails referencing any confidential information or containing disparaging or embarrassing comments concerning employees.

With regard to claim #3, while at least two employees recounted NE#1 making comments about other SPD employees being alcoholics, NE#1 denied doing so. There is insufficient evidence proving which account is correct and, as such, this claim is inconclusive.

With regard to claim #4 and as discussed in 2021OPA-0137, there was clearly ongoing conflict between NE#1 and the members of the unit, including WO#1 and WO#2. Multiple members of the unit blamed NE#1 for this. For his part, NE#1 cited to the fact that the detectives within the unit were entitled and pushed back against his supervision. Ultimately, OPA finds that, given the disputes of fact between the involved parties, this question is largely inconclusive. However, in assessing this claim, OPA finds evidence suggesting that NE#1, at times, made comments and engaged in behavior that were outside of the expectations of a supervisor. Moreover, OPA believes that the manner in which he handled the February 25 meeting was inadvisable, even if he had a right to try to prevent employees from disparaging



him and the unit to others. That being said, OPA does not believe that this rises to the level of unprofessionalism and is a performance issue better addressed by retraining and counseling.

Accordingly, OPA recommends that this allegation be Not Sustained and issues the below Training Referral.

- **Training Referral:** NE#1 should receive retraining and counseling concerning the roles and expectations of a sergeant and how he should treat and communicate with subordinates. This should include a discussion of the use of profanity, comments referencing sex, and other non-work appropriate anecdotes, whether made orally or via text or email. This retraining and counseling should be documented, and this documentation should be maintained in an appropriate database.

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

Named Employee #1 – Allegation #2

5.001 – Standards and Duties 14. Retaliation is Prohibited

SPD policy precludes its employees from engaging in retaliation. (SPD Policy 5.001-POL-14.) SPD employees are specifically prohibited from retaliating against a person who engage in activities including, but not limited to, “oppos[ing] any practice that is reasonably believed to be unlawful or in violation of Department policy” or “who otherwise engages in lawful behavior.” (*Id.*) Retaliatory acts are defined broadly under SPD’s policy and include “discouragement, intimidation, coercion, or adverse action against any person. (*Id.*)

With regard to the retaliation claim, WO#2 asserted that NE#1 twice threatened to send her to OPA, once for her improperly coding overtime and the second time for her tone. One witness officer said that she heard about retaliatory conduct from WO#2. However, this officer did not have any personal knowledge of retaliation occurring. A second witness officer stated that he was not aware of any retaliation within the unit. A third witness officer, who was at times assigned as an acting sergeant, said that, while the unit was not necessarily a “fun” place to work, he was not aware of any retaliation occurring. Only WO#1 corroborated retaliation against WO#2, saying that NE#1 threatened to have her removed from the unit, including by using OPA complaints to do so.

For his part, NE#1 denied ever using OPA or other means to retaliate against unit employees, including WO#2. He said that the only OPA referral he made concerned WO#1 and related to the February 25 meeting. He asserted that this referral was warranted under the circumstances. In addition, WO#2 was not, in fact, transferred from the unit.

OPA finds that the weight of the evidence indicates that, while NE#1 and WO#2 may have had a contentious relationship, he did not take steps to retaliate against her or remove her from the unit. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #1 – Allegation #3

12.040-POL-3 Using Department Devices 2. Employees Use Devices in a Professional Manner



SPD Policy 12.040-POL-3(2) requires SPD employees to use Department devices, including cell phones, in a professional manner. Here, it was alleged that NE#1 sent a number of unprofessional texts to unit employees. These texts included the following:

- “A word personally for me, I’m focused on safety big time and I will present as a prick if provoked. I don’t take shit from anyone and don’t expect you to either. Please be aware that I have a pack of Lucky Strike, a lighter and other accoutrements as required by these precedent times.”
- “Please, all of you get drunk, get laid or do whatever you do and have your game face on for tomorrow, no fucking complaining, and I mean that.”
- “Go have sex and get drunk.”
- “Fuuuuuuck.”

When asked about these texts, several employees from the unit who received them thought they were strange coming from a supervisor. Others felt that the texts were unprofessional and improper.

NE#1 stated that he wrote the texts in the context of the ongoing demonstrations from last summer, which he described as an unprecedented and stressful time. He said that the purpose of the texts was to convey to the unit employees to be ready to be deployed. He stated that no one raised concerns to him at the time or expressed the belief that the texts were inappropriate. NE#1 denied that the texts violated Department policy under the circumstances.

In assessing this allegation, OPA does not believe that sending texts that contain profanity and references to sex, even if purposed to get people ready for a long and stressful deployment, was appropriate. This was particularly the case when sent by an SPD supervisor and from a Department cell phone. However, OPA sees no malice in the texts and there is no evidence that they were purposed to offend others. Moreover, while the texts included some profanity, there is no evidence that the texts contained insulting or pejorative statements towards others or any derogatory language. Given this, OPA believes that retraining and counseling is the appropriate result and refers to the Training Referral above (see Named Employee #1 – Allegation #1).

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