



CLOSED CASE SUMMARY

ISSUED DATE: SEPTEMBER 27, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0157

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001- Standards and Duties POL-10 - Employees Shall Strive to be Professional	Not Sustained (Inconclusive)
# 2	15.080-POL-2 Follow-Up Unit Investigation 1. Follow-Up Investigations Will Include Certain Minimum Components	Not Sustained (Training Referral)
# 3	15.180-POL-1 - Officers Shall Conduct a Thorough and Complete Search for Evidence	Allegation Removed
# 4	15.180-POL-5 - Officers Shall Document all Primary Investigations on a Report	Allegation Removed
# 5	15.410-POL-5 - The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents	Not Sustained (Training Referral)

Named Employee #2

Allegation(s):		Director's Findings
# 1	5.001- Standards and Duties POL-10 - Employees Shall Strive to be Professional	Not Sustained (Unfounded)
# 2	15.080-POL-2 Follow-Up Unit Investigation 1. Follow-Up Investigations Will Include Certain Minimum Components	Not Sustained (Training Referral)
# 3	15.180-POL-1 - Officers Shall Conduct a Thorough and Complete Search for Evidence	Allegation Removed
# 4	15.180-POL-5 - Officers Shall Document all Primary Investigations on a Report	Allegation Removed
# 5	15.410-POL-5 - The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents	Not Sustained (Training Referral)

Named Employee #3

Allegation(s):		Director's Findings
# 1	15.080-POL-2 Follow-Up Unit Investigation 1. Follow-Up Investigations Will Include Certain Minimum Components	Not Sustained (Training Referral)
# 2	15.180-POL-1 - Officers Shall Conduct a Thorough and Complete Search for Evidence	Allegation Removed
# 3	15.180-POL-5 - Officers Shall Document all Primary Investigations on a Report	Allegation Removed
# 4	15.410-POL-5 - The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents	Not Sustained (Training Referral)



Named Employee #4

Allegation(s):		Director's Findings
# 1	5.001- Standards and Duties POL-10 - Employees Shall Strive to be Professional	Allegation Removed
# 2	15.080-POL-2 Follow-Up Unit Investigation 1. Follow-Up Investigations Will Include Certain Minimum Components	Allegation Removed
# 3	15.180-POL-1 - Officers Shall Conduct a Thorough and Complete Search for Evidence	Allegation Removed
# 4	15.180-POL-5 - Officers Shall Document all Primary Investigations on a Report	Allegation Removed
# 5	15.410-POL-5 - The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents	Allegation Removed

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 Employees failed to properly and thoroughly investigate his daughter's death.

SUMMARY OF INVESTIGATION:

The Complainant filed an OPA complaint in which he alleged that multiple SPD detectives failed to properly investigate his daughter's death. The Complainant asserted that it was a homicide and that her boyfriend was the perpetrator. He felt that the detectives did a poor job and that, as a result, justice had not been served. The Complainant also contended that the detectives – specifically Named Employee #1 (NE#1) and Named Employee #2 (NE#2) – were unprofessional in their communications with him. However, he later clarified that NE#1, not NE#2, was the detective who he believed was unprofessional.

OPA's investigation indicated that patrol officers responded to a call from the boyfriend concerning a traffic accident in which his girlfriend – referred to here as the victim – was injured. He reported that he was driving, the victim jumped out of the car, and, when he started driving away, the victim went after him and fell while running. The boyfriend said that the victim had assaulted him earlier that day and showed scratches to the officers. The boyfriend told the officers that the victim had been drinking and was intoxicated. He denied using drugs or drinking alcohol. However, he subsequently stated that he had a part of a beer when he was arguing earlier with the victim. The boyfriend said that he did not think he ran over the victim with the car and did not know how she suffered her injuries. The boyfriend was emotional when interviewed by the officers. The officers spoke with two witnesses who described seeing the victim get out of the moving car and then fall to the ground. One witness said that he also witnessed an assault perpetrated on the boyfriend by the victim. The other witness described that the rear tire of the car may have been driven over the victim. The officers later spoke to other community members, including a third witness who lived in the same house as the boyfriend and the victim. She confirmed that the victim had been drinking but did not know how intoxicated she was. The witness stated, however, that the victim suffered from mental illness and, at times, abused alcohol, which exacerbated that illness. The witness said that the boyfriend was "patient, loving, and kind," and she did not think that he purposefully harmed the victim.



Shortly after arriving at the scene, it was determined that the victim had passed away. A patrol sergeant responded and took over the investigation. Once the victim was declared deceased, the patrol sergeant notified the Homicide Unit and the Traffic Collision Investigation Squad (TCIS). The sergeant spoke to TCIS over the phone and provided updates concerning the incident. The sergeant noted that the Domestic Violence (DV) unit might need to be notified because of the possible assault between the victim and the boyfriend. The sergeant also indicated that there was no evidence of intoxication or drug ingestion on the boyfriend's part. The sergeant and the officers examined the scene and discussed the evidence. They noted that there were tire marks on the street that might have been old, but that it seemed possible that the boyfriend had tried to pull out at a relatively high rate of speed (15-20 mph). They also believed it likely that the car tire did run over the victim.

The TCIS and Homicide sergeants responded to the scene, as did two TCIS detectives and two Homicide detectives. The TCIS detectives examined the scene. The assigned detective – NE#2 – determined that the boyfriend's car had driven over the victim as one of the witnesses had said. The Homicide detectives – NE#1 and Named Employee #3 (NE#3) – transported the boyfriend to SPD headquarters where he was interviewed.

At the Homicide interview, the boyfriend said that he worked for Boeing and, that day, he was in Seattle for a "class." He said that the victim was drunk at the residence and that he also had a drink there while they were with their friends. He said that he did so "because he wanted to find out what was going on." The boyfriend spoke with the victim, who told him that she was hit on by someone in the residence, which upset her. She grew more upset because she did not think that the boyfriend believed her. The victim, who was intoxicated, became more and more agitated. He drove away from the residence, and, at that time, the victim yelled at him and got out of the car. He said that had done this in the past. They then returned to the residence for her to get her things. She grabbed his neck and told him to pull over. He shoved her off and then pulled over. He got out of the car because she came at him again. When she also got out of the car, the boyfriend got back in and tried to leave. He saw the victim grab for the door handle and then jerk and fall.

TCIS took control of the investigation. NE#2 did not interview the boyfriend and relied on the Homicide interview. He also did not watch any Body Worn Video (BWV) of the incident, which would have included the boyfriend's and witnesses' accounts. NE#1 and NE#3 also did not watch any BWV.

None of the detectives caused the DV elements of this incident to be investigated. In addition, none of the detectives or, for that matter, the TCIS and Homicide sergeants, investigated a possible DUI, including not querying witnesses in the residence concerning what, if anything, the boyfriend consumed. The detectives and sergeants also did not summon a Drug Recognition Expert (DRE) to the scene.

The TCIS investigation ultimately concluded that the incident was a fatal accident and that there was no evidence of criminality on the boyfriend's part. TCIS completed a report that was part of its case file. NE#1 and NE#3 also completed a Criminal Investigation Report (CIR), but this was not uploaded by the detectives to the TCIS file until after this investigation was initiated and the Named Employees received contractual notice of the allegations set forth herein.

As part of its investigation, OPA reviewed the documentation generated by the Named Employees and the responding patrol officers. OPA also reviewed BWV, as well as video of the Homicide interview of the boyfriend. Lastly, OPA interviewed the Complainant, the Named Employees, and other witnesses – both civilian and sworn.



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.) The policy further states the following: “Any time employees represent the Department or identify themselves as police officers or Department employees, they will not use profanity directed as an insult or any language that is derogatory, contemptuous, or disrespectful toward any person.”

Here, the Complainant alleged that NE#1 was unprofessional in their phone communications. Specifically, the Complainant said that NE#1 called him “out of the blue” and then appeared to be doing so “on behalf of” the boyfriend’s family. The Complainant felt that this was inappropriate.

For his part, NE#1 recalled that he was contacted by the boyfriend’s family who were concerned about social media posts made by the Complainant. They felt that some of the posts could be construed as threatening. They asked NE#1 to call the Complainant and inform him that Homicide had investigated the incident and turned it over to TCIS. NE#1 spoke to the Complainant and told him that he was aware of the posts, even though he had not viewed them. According to NE#1, the Complainant acknowledged making the posts. NE#1 told the Complainant that in the United States – the Complainant lives in Canada – those types of posts could raise the possibility of a criminal investigation for harassment. NE#1 recalled that the Complainant asked him if he was calling on behalf of the boyfriend’s family and NE#1 said that he was calling to see if he could answer the Complainant’s questions. The Complainant then claimed that NE#1 was working for the boyfriend’s family.

There is no audio recording of this conversation and, thus, no way to reconcile the differences between the accounts provided by the Complainant and NE#1. If the Complainant’s account is true, it is possible that an SPD detective advocating on behalf of a person who the Complainant believed murdered his daughter could violate the Department’s professionalism policy. However, if the conversation took place as NE#1 recounted it, it would not be unprofessional.

As OPA cannot definitively determine what occurred, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

Named Employee #1 - Allegation #2

15.080-POL-2 Follow-Up Unit Investigation 1. Follow-Up Investigations Will Include Certain Minimum Components

SPD Policy 15.080-POL-2 governs investigations conducted by follow up units, including specifying the requirements of such investigations and of the documentation ultimately generated by detectives.

In assessing the Named Employees’ compliance with this policy, OPA notes that collision and homicide investigations are complex and require substantial technical expertise and experience. OPA further notes that these investigators receive significant training and use that instruction to assess cases to determine whether criminality exists. Lastly, OPA



notes that these investigators make real-time evidentiary, scene, and credibility determination based on what they observe and that OPA does not have similar access to, given that its investigations are conducted later in time and based on a review of the totality of the evidence. Because of all of this, OPA is generally reluctant to substitute its judgment for that of specialized investigators.

That being said, OPA identified a number of areas in which the investigation conducted by the Named Employees appeared to be incomplete. This included the following: (1) none of the Named Employees reviewed BWV; (2) they did not fully investigate the Complainant's account concerning what he was doing earlier that day, including his statement that he was in Seattle for a training, details as to when he arrived at the residence, and clarity concerning his and the victim's time at the residence; (3) they did not completely assess the dispute between boyfriend and the victim, including failing to interview all of the individuals within the residence and the person who was allegedly hitting on the victim; (3) they did not investigate the DV elements of this incident or cause those elements to be referred to the DV unit; and (4) they did not explore whether the subject was DUI, specifically given his admission that he drank at least part of one beer, or call a DRE to the scene. In addition, NE#2 did not independently interview the boyfriend concerning his operation of the car and the mechanism of the accident and NE#1 and NE#3 failed to timely upload their report to the case file.

All of the Named Employees have significant experience and should have known to complete these steps. While doing so likely would not have changed the outcome given the evidence – specifically, because of the statements of the witnesses – it still resulted in an incomplete investigation that fell short of the standards governing the work of these detectives. Moreover, it appeared to OPA that the Named Employees made a decision concerning the evidence very early on and that, because of this, they did not fully explore alternative theories or possibilities. This negatively impacted the quality of the investigation.

The above being said, while this investigation did not meet the high level expected of the Named Employees, OPA does not believe that it constituted intentional misconduct for which discipline is required. In reaching this assessment, OPA notes that all of the Named Employees have served for extensive amount of time in follow-up units and are high performers in their respective fields. This case appears to be an anomaly that may be, in part, attributable to the fact that there were multiple units involved, resulting in confusion. However, OPA recommends training to the Named Employees, as well as action on the part of the chain of command, to make sure that this conduct is not revisited in the future.

- **Training Referral:** The Named Employees' chains of command should discuss the investigation with them and, specifically, review the issues and shortcomings identified by OPA. The Named Employees should be counseled and retrained on all of these matters. In addition, the chains of command should review this investigation for systemic issues. For example, is it common for follow up detectives to not review BWV and does the requirement to ensure that all aspects of a case be investigated (i.e. DUI and DV) need to be specifically included in policy? This retraining and counseling should be formally documented. In addition, the steps that the chains of command take to address potential systemic issues should also be documented.

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

Named Employee #1 - Allegation #3

15.180-POL-1 - Officers Shall Conduct a Thorough and Complete Search for Evidence



SPD Policies 15.180-POL-1 and 15.180-POL-5 concern primary investigations, which are the investigations conducted by patrol officers. These policies do not govern investigations conducted by detectives and these are instead governed by SPD Policy 15.080-POL-2, discussed in the context of Allegation #2 above.

As NE#1, NE#2, and NE#3 are all follow-up unit detectives, OPA recommends that this allegation be removed as against them because the policies are inapplicable.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #4

15.180-POL-5 - Officers Shall Document all Primary Investigations on a Report.

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #1 - Allegation #5

15.410-POL-5 - The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents

SPD Policy 15.410-POL-5 concerns investigations into DV incidents. The policy directs that the “Department is committed to a thorough primary investigation of domestic violence incidents.” The policy also sets forth the requirements of such investigations.

All of the Named Employees recognized that there were DV elements to the incident, but none of them investigated those elements. They all stated that they did not, in their roles, investigate DV crimes. In addition, none of the Named Employees notified the DV unit or took steps to ensure that this occurred.

Ultimately, OPA believes that they should have done so. While they were assigned to TCIS and Homicide, this did not absolve them of making sure that all of the aspects of this incident were fully investigated or, at the very least, that the DV unit looked into the case. While it is unlikely that the DV unit would have moved forward with an investigation as the victim appeared to be the primary aggressor based on witness accounts and was deceased, this does not change the fact that a notification should have been made.

In assessing the Named Employees culpability here, OPA notes that their sergeants were at the scene and also did not make the necessary notifications. While this does not excuse the Named Employees’ failure, it does mitigate their responsibility. Given this, OPA believes that retraining rather than discipline is the appropriate result and refers to the above Training Referral (see Named Employee #1 – Allegation #3).

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

Named Employee #2 - Allegation #1

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



As discussed above, while the Complainant initially asserted that NE#2 treated him unprofessionally, he later clarified that this was not the case. Accordingly, OPA recommends that this allegation be Not Sustained – Unfounded.

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

Named Employee #2 - Allegation #2

15.080-POL-2 Follow-Up Unit Investigation 1. Follow-Up Investigations Will Include Certain Minimum Components

OPA recommends that this allegation be Not Sustained and refers to the Training Referral above (see Named Employee #1 – Allegation #2).

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

Named Employee #2 - Allegation #3

15.180-POL-1 - Officers Shall Conduct a Thorough and Complete Search for Evidence

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #4

15.180-POL-5 - Officers Shall Document all Primary Investigations on a Report.

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #5

15.410-POL-5 - The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents

OPA recommends that this allegation be Not Sustained and refers to the Training Referral above (see Named Employee #1 – Allegation #5).

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

Named Employee #3 - Allegation #1

15.080-POL-2 Follow-Up Unit Investigation 1. Follow-Up Investigations Will Include Certain Minimum Components

OPA recommends that this allegation be Not Sustained and refers to the Training Referral above (see Named Employee #1 – Allegation #2).

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



Named Employee #3 - Allegation #2

15.180-POL-1 - Officers Shall Conduct a Thorough and Complete Search for Evidence

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be removed.

Recommended Finding: Allegation Removed

Named Employee #3 - Allegation #3

15.180-POL-5 - Officers Shall Document all Primary Investigations on a Report.

For the same reasons as stated above (see Named Employee #1 – Allegation #3), OPA recommends that this allegation be removed.

Recommended Finding: Allegation Removed

Named Employee #3 - Allegation #4

15.410-POL-5 - The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents

OPA recommends that this allegation be Not Sustained and refers to the Training Referral above (see Named Employee #1 – Allegation #5).

Recommended Finding: Not Sustained (Training Referral)

Named Employee #4 - Allegation #1

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

OPA added five policy allegations against an unknown SPD employee based on the possibility that another yet unidentified officer could have also been involved in potential misconduct.

During its investigation, however, OPA found no indication that this was the case. Accordingly, OPA recommends that allegations #1 through #5 against the unknown SPD employee be removed.

Recommended Finding: Allegation Removed

Named Employee #4 - Allegation #2

15.080-POL-2 Follow-Up Unit Investigation 1. Follow-Up Investigations Will Include Certain Minimum Components

For the same reasons as stated above (see Named Employee #4 – Allegation #1), OPA recommends that this allegation be removed.

Recommended Finding: Allegation Removed

Named Employee #4 - Allegation #3

15.180-POL-1 - Officers Shall Conduct a Thorough and Complete Search for Evidence



For the same reasons as stated above (see Named Employee #4 – Allegation #1), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #4 - Allegation #4

15.180-POL-5 - Officers Shall Document all Primary Investigations on a Report.

For the same reasons as stated above (see Named Employee #4 – Allegation #1), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**

Named Employee #4 - Allegation #5

15.410-POL-5 - The Department is Committed to a Thorough Primary Investigation of Domestic Violence Incidents

For the same reasons as stated above (see Named Employee #4 – Allegation #1), OPA recommends that this allegation be removed.

Recommended Finding: **Allegation Removed**