



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 2, 2021

FROM: DIRECTOR ANDREW MYERBERG
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0251

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 – Standards and Duties. 10. Employees Will Strive to be Professional	Not Sustained (Inconclusive)
# 2	5.001 – Standards and Duties 14. Retaliation is Prohibited	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 alleged that the Named Employee engaged in unprofessional and retaliatory actions.

SUMMARY OF INVESTIGATION:

The Complainant reported that she was having ongoing issues with other members of a club that she belonged to. The issues concerned her bringing her service dog into the club and objections raised by club members to her doing so. She said that Named Employee #1 (NE#1) was one of the club members with whom she had ongoing issues. The Complainant told OPA that, on one occasion, she entered the club with her service dog, and she was informed that there was "trouble." At one point, she observed NE#1 and another individual pointing towards her. NE#1 walked over to her, told her to "smile," and took a picture of her with his cell phone. She felt that this was unprofessional. She later learned that NE#1 was employed by SPD and filed this complaint.

OPA spoke to six other witnesses. Three of the witnesses did not witness the interaction between NE#1 and the Complainant but described that NE#1 would act like a bully at times. They thought that this was particularly inappropriate given his status as a police officer, which people at the club knew about. Witness #1 and Witness #2 said that, on one occasion, NE#1 said to Witness #1 that he would make his life "miserable." This was related to NE#1's frustration with how slowly the club was handling the issue with the Complainant's service dog.

Witness #4 worked at the club and believed that the Complainant's service dog was insufficiently trained and should not be allowed in. Witness #4 observed instances of the dog snapping and barking, and she raised her concerns with the club management, as it was their decision to bar the dog from the club.

Witness #5 denied that NE#1 acted like a bully at the club or that he made his status as an SPD officer public. He recalled having a conversation with NE#1 about the dog and NE#1 noted his belief that the dog was not allowed in the club based on his interpretation of state law. Witness #5 agreed. Both were concerned that the dog could bite



someone given its demeanor and conduct. NE#1 and Witness #5 went to speak to Witness #1. Witness #5 said that NE#1 raised concerns that the dog could bite someone and thus greatly increase the club's insurance premiums. Witness #5 described Witness #1 as rolling his eyes and saying that the matter was being evaluated by the club. Witness #5 denied that NE#1 told Witness #1 that he would make his life miserable or acted inappropriately during that conversation. He spoke to NE#1, and they agreed that if the club would not act, they could seek a remedy via state law and/or through the health department. He recalled that he and NE#1 walked up to the Complainant and that NE#1 took a picture of the dog. Witness #5 asserted that NE#1 said "smile" at the time.

Witness #6 described NE#1 as a nice and quiet person. She denied that he would act like a bully at the club or use the fact that he was an SPD employee to his advantage. She stated that the Complainant, not NE#1, was at fault. She said that the Complainant hated Witness #5, and this was about her "rage" and the fact that the Complainant, herself, was a bully towards others.

OPA interviewed NE#1. He said that the Complainant began to bring her dog into the club. He felt that this was a problem because the dog was not actually a trained service animal and nearly bit several club members. He raised concerns about the dog to employees and trustees of the club, but no action was taken. He ultimately decided to take a picture of the dog in the club, and he filed a complaint with the health department, attaching the photograph. He recounted that the health department later contacted the club and informed them that the dog could not be inside. NE#1 did not believe that his taking of the photograph and filing the complaint with the health department were unprofessional or unnecessarily escalatory.

NE#1 denied that he acted like a bully in the club. He said that people likely knew that he was employed by SPD, but that he did not use that to his advantage or to get what he wanted. NE#1 explained that at the core of this complaint was a power struggle within the club. He said that Witnesses #1, #2, and #3 were trustees of the club and their leadership was being challenged. All three were ultimately voted out of their positions in what NE#1 described as a "landslide." He supported the challenges to them. NE#1 stated that Witness #1 and Witness #3 had not been back to the club since. He felt that this may have been a reason why they supported the Complainant in her complaint against him. NE#1 denied that any of the actions he took were unprofessional or retaliatory.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.001 – Standards and Duties. 10. Employees Will 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." (*Id.*) Lastly, the policy instructs Department employees to "avoid unnecessary escalation of events even if those events do not end in reportable uses of force." (*Id.*)

OPA's investigation revealed two accounts of what occurred and of NE#1's conduct. The Complainant and three other witnesses identified NE#1 as acting like a bully and using his status as an SPD officer to his advantage. Three other witnesses and NE#1 denied that this was the case.



Witness #5 was the only independent witness to the interaction between NE#1 and the Complainant. He did not feel that NE#1 acted inappropriately in taking the picture of the Complainant's dog. Both he and NE#1 noted that the taking of the picture was purposed to facilitate the filing of a complaint with the health department and that the dog was later prohibited from being in the club. While it was undisputed that NE#1 said "smile" when taking the picture, OPA does not believe that this, standing alone, constituted unprofessionalism.

Witness #5 and Witness #2 had differing accounts of whether NE#1 told Witness #1 that he would make his life "miserable." Witness #5 denied that NE#1 did so while Witness #2 said the opposite.

Lastly, this case is complicated by the interpersonal relationships between all of the involved parties. The Complainant and Witnesses #1, #2, and #3 are allied in interest, while NE#1 and Witnesses #4, #5, and #6 share similar perspectives.

Based on the above, OPA cannot determine which side is more likely when applying the requisite burden of proof. As such, OPA recommends that this allegation be Not Sustained – Inconclusive.

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

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.*)

It was alleged that NE#1's statement to Witness #1 that he would make his life miserable if the dog issue was not resolved constituted retaliation. As discussed above, Witness #1 and Witness #2 asserted that this statement was made but NE#1 and Witness #5 denied that this was the case. Due to this dispute of fact, OPA cannot definitively determine what occurred.

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

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