

**Issued Date:** NOVEMBER 8, 2023

**From:** Director Gino Betts, Office of Police Accountability



**Case Number:** 2021OPA-0366

## **Allegations of Misconduct & Director's Findings**

### **Named Employee #1**

1. **Allegation #1:** 5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy
    - a. **Finding:** Sustained
  2. **Allegation #2:** 12.050 - Criminal Justice Information Systems 6. All Employees Shall Adhere to WASIS and NCIC Policies
    - a. **Finding:** Sustained
  3. **Allegation #3:** 12.050 - Criminal Justice Information Systems 2. Inquiries Through ACCESS, or Any Other Criminal Justice Record System, Are Only to Be Made for Legitimate Law Enforcement Purposes
    - a. **Finding:** Sustained
  4. **Allegation #4:** 5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional.
    - a. **Finding:** Sustained
- **Proposed Discipline:** One Hundred Thirty-Five Hours (15 Day) Suspension to Termination
    - **Imposed Discipline:** Termination

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**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.**

### **Administrative Note on Proposed Findings:**

When the OPA Director recommends a sustained finding for one or more allegations, a discipline committee, including the named employee's chain of command and the department's human resources representative, convenes and may propose a range of disciplinary to the Chief of

Police. While OPA is part of the discipline committee, the Chief of Police decides the imposed discipline, if any. See OPA Internal Operations and Training Manual section 7.3 – Sustained Findings.

### **Executive Summary:**

It was alleged that Named Employee #1 (NE#1) stalked his former romantic partner (Community Member #1 or CM#1). It was further alleged that NE#1's conduct caused CM#1 to file multiple petitions for orders of protection. It was further alleged that NE#1's conduct was investigated criminally by multiple outside agencies.

It was alleged that NE#1 violated the law, impermissibly used criminal justice databases, and was unprofessional.

### **Administrative Note:**

On September 22, 2023, the Office of Inspector General certified this investigation as thorough, timely, and objective.

### **Summary of the Investigation:**

On August 9, 2021, an SPD supervisor filed an internal Blue Team complaint with OPA. According to the Blue Team complaint, NE#1 self-reported that his attorney advised him he was the listed respondent in a protection order and that he may become the subject of a criminal investigation. NE#1 declined to provide further details at that time. The SPD supervisor later learned from a Snohomish County Sheriff's Office (SCSO) Lieutenant that SCSO was investigating NE#1 for multiple instances of stalking in both Snohomish County and the City of Everett. The SCSO report also suggested NE#1 improperly used his WASIC/ACCESS privileges to obtain vehicle location information.

OPA opened an intake investigation, which was tolled while it was investigated by SCSO and, later, under review by the Snohomish County Prosecuting Attorney's Office (SCPAO). Ultimately, SCPAO declined to prosecute the criminal case. OPA continued its administrative investigation at that time.

During its investigation, OPA reviewed the Blue Team complaint and its attachments. NE#1's alleged criminal conduct was thoroughly investigated by the SCSO, which generated a two hundred thirty-two (232) page Case Report (SCSO Case Report), which OPA also reviewed. The SCSO Case Report collected information from multiple incidents that were reported in both Snohomish County and the City of Everett. The SCSO Case Report also included declination memoranda from SCPAO. OPA also reviewed WASIC/ACCESS records and computer-aided dispatch (CAD) records. Finally, OPA interviewed NE#1.

## **1. SCSO Case Report**

SCSO conducted a comprehensive investigation into NE#1's alleged criminal activity. Included within the SCAO Case Report, among other things, were decline notices from the SCPAO, investigating officer narratives, digital forensic examinations, witness statements, petitions for orders of protection and the judicial orders on the petitions, a sworn declaration of NE#1's and CM#1's mutual friend (Community Member #2 or CM#2), search warrant applications and judicial orders, an Everett Police Department case file, cell phone records, and a case synopsis.

#### **a. SCSO Synopsis/PC for Arrest**

A SCSO Deputy Detective wrote a two-page synopsis of his investigation setting forth his probable cause basis for referring the case to the SCPAO to consider for felony stalking in violation of RCW 9A.46.110(5B). The synopsis set forth the following.

NE#1 and CM#1 dated for about 11 months. On August 3, 2021, CM#1 reported to the Everett Police Department (EPD) that she thought she was being stalked by NE#1. CM#1 stated she and NE#1 broke up about three weeks earlier and, thereafter, CM#1 started dating another person, Community Member #3 (CM#3). CM#1 noted that CM#3 was married, so she and CM#3 would meet at hotels.

On July 31, 2021, CM#3 was home with his children when his doorbell rang. CM#3 reported seeing an unknown male looking through the house window with his face "pressed against the glass." CM#3 spoke to the unknown male who claimed to work for a company and discussed refinancing CM#3's home. CM#3 reported telling the unknown male to leave. CM#3 reported the unknown male drove away in a silver Audi SUV. CM#3 stated CM#1 showed him pictures of NE#1 and he "believed" the unknown male was NE#1.

On August 2, 2021, CM#3's spouse (Community Member #4 or CM#4) was at home alone. CM#4 reported that an unknown male—wearing sunglasses, a black hat, and a "covid type mask"—knocked on her door. CM#4 provided a physical description of the unknown male that matched NE#1's driver's license information. When CM#4 answered, the unknown male addressed CM#4 by her full first name, which "caught her off guard" as CM#4 commonly goes by an abbreviated form of her name. The unknown male informed CM#4 that CM#3 was having an affair and gave CM#4 pictures depicting CM#1 and CM#3 in a car together at a hotel. The unknown male told CM#4 that CM#1 and CM#3 were still at that location and then provided CM#4 with photographs depicting CM#1 and CM#3 "having sexual intercourse." CM#4 left to confront CM#1 and CM#3 at the hotel, noticing a silver Audi SUV followed her and parked in the hotel parking lot.

On August 3, 2021, CM#1 reported to EPD that a male had put something underneath her vehicle while she was at school. A classmate of CM#1 reported she observed a male drop something underneath CM#1's car, and the male then got underneath CM#1's car. The classmate stated she thought this was "weird" so she coughed and slammed her door, startling the male who got up and ran away. CM#1 advised EPD of the previous incidents and that she

thought NE#1 was stalking her. EPD showed a picture of NE#1 to CM#1's classmate, who identified NE#1 as the male she saw get underneath CM#1's car.

On September 5, 2021, law enforcement in another Washington jurisdiction responded to CM#1's residence where CM#1 stated NE#1 was following her. CM#1 also reported other instances where she observed "unknown cars were following her at high speeds."

SCSO also noted that NE#1 used, "WACIC/NCIC to gain information" on CM#3 and CM#4.

SCSO also noted that they obtained a search warrant for NE#1's cell phone, which showed he was in the area of the hotel on the night CM#1 and CM#3 were at the hotel.

SCSO concluded there was probable cause to arrest NE#1 for felony domestic violence stalking under RCW 9A.46.110. This law was changed in 2023. At the time of these incidents, a person committed misdemeanor stalking if, without lawful authority, the stalker (1) intentionally and repeatedly harassed or repeatedly followed a victim, and (2) the victim was in reasonable fear that the stalker intended to injure them, another, or property, and (3) the stalker either intended to frighten, intimidate, or harass the victim or knew or reasonably should have known the victim was afraid, intimidated, or harassed. To constitute a felony, one of six aggravating factors would need to apply. As noted later by the SCPAO, none of these aggravating factors applied in this instance. See RCW 9A.46.110.

#### **b. SCPAO Decline Notices**

SCPAO issued two decline notices. The first occurred when the SCPAO Superior Court Unit determined that there were, "no facts present to make this a felony charge." The case was then referred to the SCPAO District Court Unit to consider for gross misdemeanor stalking.

The SCPAO District Court Unit also declined the case, noting:

The suspect here is a Seattle Police Officer who engaged in unprofessional conduct in his personal life after a romantic relationship was terminated by the victim. His conduct was severe enough to be investigated as DV Stalking. The present evidence is not likely to be sufficient to prove stalking beyond a reasonable doubt due to some issues with proving identity, proving fear of injury to the victim, and civilian witness cooperation. This decline is not meant as a statement that the conduct was not criminal.

The SCPAO also summarized many of the same facts highlighted in the SCSO Synopsis. Additionally, the SCPAO noted that on August 5, 2021, CM#1 obtained a temporary protection order (TPO), but ultimately allowed the TPO to expire on August 25, 2021 when CM#1 did not appear at the court hearing for consideration of a full order. Then, on September 5, 2021, CM#1 reported another incident of an unknown vehicle following her at high speeds, to which NE#1 reportedly confessed explaining he wanted to talk to CM#1 about the protection order. CM#1

made a new petition for a TPO on September 6, 2021, and, on October 19, 2021, an agreed harassment protection order was entered.

Significantly, SCPAO noted they did not have vehicle records linking NE#1 to a silver Audi or the Kia that was reportedly following CM#1 at high speeds in September. Among other things, SCPAO also noted potential challenges proving that CM#1 felt fear that NE#1 would injure her, another, or damage anyone's property—all necessary elements of stalking.

## **2. WASIC/ACCESS Records and CAD Records**

OPA also reviewed NE#1's ACCESS system usage. OPA noted that NE#1 ran searches for CM#1, CM#3, and their registered vehicles. A review of NE#1's CAD history showed he was not logged to any calls at the times of the searches that would have necessitated NE#1 search these names. ACCESS is a Washington statewide law enforcement telecommunications system operated by Washington State Patrol. See <https://www.wsp.wa.gov/access/>. Its use is strictly limited to criminal justice purposes, and law enforcement agencies and personnel must comply with state and national standards for its use. See id.

## **3. OPA Interview – NE#1**

OPA conducted a compelled, audio-recorded interview of NE#1 on August 23, 2023. Accordingly, NE#1 was afforded the protections guaranteed to him under *Garrity v. New Jersey*, 385 U.S. 493 (1967).

NE#1 stated he has worked for SPD as a police officer since 2012. NE#1 stated he had three years of prior law enforcement experience from a jurisdiction in another state. NE#1 stated he was only ever assigned to patrol as an SPD officer.

NE#1 provided his version of events. NE#1 stated he had dated CM#1 for about a year and, during that time, there were cheating and trust issues. NE#1 explained that, after an initial instance of cheating, CM#1 would attempt to put him at ease by telling him when other men were "trying to pick up on her." NE#1 said CM#1 told him about "some married guy at the gym." NE#1 stated that, due to his trust issues, he followed CM#1 to the gym, "to see if I could see who she was talking about." NE#1 described seeing another man interacting with CM#1 a couple times and noted that the man, "had driven a couple different cars to the gym." NE#1 said he made notes of the different cars.

NE#1 stated that he and CM#1 continued dating for, perhaps, a couple of months after that. NE#1 said that CM#1 then ended the relationship. NE#1 said he then talked with two of his friends, who were also family members of CM#1. NE#1 stated during this discussion he surmised that CM#1 had been cheating on him throughout their relationship. NE#1 described that he frequently visited these friends, who lived close to CM#1. NE#1 described a "thought" he had that, "if I ever saw them together again that I would, like, try to expose the situation to the guy's wife."

NE#1 said that, an undetermined amount of time later, he was going shopping and to the gym and observed CM#1's car parked at a hotel near the store where he planned to shop. NE#1 described finding this, "kind of interesting." NE#1 said he then noticed the man from the gym was parked near CM#1's car. NE#1 said he took pictures of the cars in the parking lot and "gave those pictures to the guy's wife and apparently she followed up on that."

NE#1 described his purpose in going to CM#3's and CM#4's house as putting CM#4 "in the loop" about the affair. NE#1 described having been cheated on in the past and wished he had known sooner. NE#1 denied following CM#4 to the hotel, but noted they were, "probably on the same road for a while," because CM#3 and CM#4 lived in a place where, "there's just like one main road." NE#1 admitted telling CM#4 the location of the hotel where he observed CM#1 and CM#3's vehicles. NE#1 also admitted returning to that location that same day. NE#1 said he did not "really know" his purpose in returning to the hotel that same day. NE#1 stated he was driving a Silver Audi that day. NE#1 denied ever going to CM#3's and CM#4's house on any other occasion.

NE#1 stated that, the next day, he was going to go "confront" CM#1, but she was at beauty school at the time. NE#1 said his plan was to, "go to her beauty school and confront her about the cheating." NE#1 said he waited by CM#1's car, but that a person he assumed was CM#1's friend "yelled something at me." NE#1 said this "snapped" him out of the situation and made him reconsider, and that his plan was "not a good idea." NE#1 described that he parked at a coffee shop near the school because he "wanted to surprise [CM#1] and confront her and not have her see my car out there." NE#1 stated he needed to surprise CM#1 because she avoided discussing cheating in the past and he thought she would avoid him if she saw him. NE#1 stated that, while waiting for CM#1, he was nervously fidgeting with some ChapStick, which he dropped. NE#1 denied placing a tracking device on CM#1's car or tampering with her car. NE#1 said that, a week or two after that, he received a TPO.

NE#1 stated he started seeing a counselor shortly after he received the TPO. NE#1 stated he saw the counselor for about six months, discussing prior issues from his personal life that were "particularly triggering" for him.

NE#1 said that, when he gave the photographs to CM#4, she asked him, "Well, if you see anything else, would you ever let me know?" NE#1 told CM#4 he would. Because of this, NE#1 said that after the TPO expired he returned to CM#1 and CM#3's gym to, "see if I was going to see those two together again and I didn't." NE#1 stated he did observe CM#1. NE#1 stated he was going to "follow to see if she was going to meet up with [CM#3]." NE#1 said CM#1 spotted him and "sped off." CM#1 then told her mother, who told his friend, CM#2. NE#1 said CM#2 called him. NE#1 told CM#2 he made a mistake and he intended to go to CM#1's house and talk to her mom and dad and apologize. NE#1 said he went to CM#1's house and explained how the situation was triggering for him. However, NE#1 explained that, prior to his arrival at CM#1's house, SCSO deputies were called to the house. NE#1 stated he would leave if CM#1 and

her family wanted him to leave, but they permitted him to stay and the police left. NE#1 said that was the last contact that he had with CM#1 or her family. NE#1 stated he was driving a rental car that day, “so that I couldn’t be noticed if I saw those two together.”

NE#1 admitted running CM#3’s name and license plate in ACCESS to, “try to get an address to – if I ever exposed the affair for like the – to his wife, I would like, know where to go to expose it.” NE#1 said he assumed CM#3 was married when he ran the vehicle information and noticed it was registered to both male and female names. NE#1 also stated his friends confirmed that CM#1 was seeing, “some married guy at the gym.”

NE#1 denied engaging in criminal activity because he, “never had any intent to do anything criminal to either of them or threaten anybody or do anything like that.” NE#1 stated he just wanted to expose the affair.

NE#1 admitted using ACCESS for non-criminal justice purposes. NE#1 also admitted to behaving unprofessionally.

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### **Analysis and Conclusions:**

#### **Named Employee #1 - Allegation #1**

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

It was alleged that NE#1 engaged in criminal stalking.

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy. At the time of these incidents, RCW 9A.46.110 read, in relevant part:

1. A person commits the crime of stalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:
  - a. He or she intentionally and repeatedly harasses or repeatedly follows another person; And
  - b. The person being harassed or followed is placed in fear that the stalker intends to injure the person, another person, or property of the person or of another person. The feeling of fear must be one that a reasonable person in the same situation would experience under all the circumstances; and
  - c. The stalker either:
    - i. Intends to frighten, intimidate, or harass the person; or
    - ii. Knows or reasonably should know that the person is afraid, intimidated, or harassed even if the stalker did not intend to place the person in fear or intimidate or harass the person.

OPA finds, by more than a preponderance of the evidence, that NE#1 violated SPD Policy 5.001-POL-2 based on his actions which violated RCW 9A.46.110.

As an initial matter, OPA notes that the SCPAO declined prosecution because the evidence was not likely to prove stalking “beyond a reasonable doubt,” due to issues with proving (1) identity, (2) fear of CM#1; and (3) potential issues with witness cooperation. SCPAO explicitly noted their declination was “not meant as a statement that the conduct was not criminal.”

OPA does not need to prove this policy violation beyond a reasonable doubt, an extremely high standard. Moreover, NE#1’s OPA interview provided significantly more evidence—unavailable to the SCPAO—that confirmed NE#1’s involvement in the alleged conduct.

NE#1 admitted to repeatedly following CM#1, beginning prior to NE#1 and CM#1’s breakup.

OPA finds that the evidence shows by more than a preponderance of the evidence that NE#1 caused CM#1 to fear for herself or others through his conduct. First, CM#1 reported NE#1’s conduct to the police on multiple occasions. Second, CM#1 sought multiple TPOs against NE#1. OPA specifically notes that, after the September 5, 2021, incident in which NE#1 followed CM#1 to her house, CM#1 renewed her petition for a protection order the very next day. In her petition, CM#1 cited—under penalty of perjury—her reason for seeking a protection order lasting longer than one year as, “I’m afraid if it doesn’t last a year or longer he will harm me or a family member.” Moreover, CM#2 provided a sworn declaration in support of CM#1’s petition. In it, CM#2 wrote CM#1 was his relative and he had been close friends with NE#1 for twenty years. CM#2 wrote that NE#1 was a groomsman at both his weddings. Still, CM#2 wrote that, “As a police officer, [NE#1] should know and understand how his action and stalking of [CM#1] are scary and terrorizing her and her family.” Considering these sworn, contemporaneous statements, together with the totality of NE#1’s conduct, OPA also finds by more than a preponderance of the evidence that a reasonable person in CM#1’s situation would also fear NE#1.

Finally, OPA finds by more than a preponderance of the evidence that NE#1 knew or should have known that his actions would cause CM#1 to feel fear, intimidation, or—at the very least—harassed. Importantly, NE#1 had already been served with a petition for a TPO when he followed CM#1 to her house on September 5, 2021—the most recent in a long running course of following CM#1. Moreover, OPA finds it significant that NE#1 took significant steps to avoid detection by CM#1, on multiple occasions, so as to “surprise” and “confront” her. OPA finds that NE#1 would not have intentionally parked his vehicle away from CM#1’s school or gone to the lengths of renting a car if he were not aware that his presence would cause CM#1 to flee—which she did on September 5, 2021, when she “sped off” (NE#1’s words) from the gym after seeing him.

OPA recognizes and supports NE#1’s effort in attending six months of counseling related to his behavior during these incidents. OPA also recognizes that romantic relationships can be complicated and inspire strong emotions. However, OPA found NE#1’s statements throughout his interview minimized the extreme nature of his behavior toward CM#1, CM#3, CM#4, and CM#1’s



family. Given his status as a police officer and presumed access to and acuity with firearms, OPA recognizes NE#1's behavior would have carried an additional element of concern. OPA agrees with CM#2 that NE#1's actions were likely "scary and terrorizing" to CM#1 and her family.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

#### **Named Employee #1 - Allegation #2**

##### **12.050 - Criminal Justice Information Systems 6. All Employees Shall Adhere to WASIS and NCIC Policies**

It was alleged NE#1 failed to adhere to WASIS and NCIC policies.

On the dates of this incident, SPD Policy 12.050(6) required SPD employees to adhere to WASIS and NCIC policies. See SPD Policy 12.050(6). Among the most central of these policies is that use of the WASIS/ACCESS system may only be used for a "specific criminal justice reason." See id. NE#1 admitted he violated this policy by using the ACCESS system without a criminal justice purpose. Beyond question,

using a police database to discover the address of his former romantic partner's current partner in order to "expose" the affair was an entirely personal purpose. OPA notes that NE#1's use of criminal justice systems for personal—and potentially criminal—purposes risked sanctions to the entire Department for their access to these critical systems.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

#### **Named Employee #1 - Allegation #3**

##### **12.050 - Criminal Justice Information Systems 2. Inquiries Through ACCESS, or Any Other Criminal Justice Record System, Are Only to Be Made for Legitimate Law Enforcement Purposes**

It was alleged that NE#1 accessed criminal justice record systems for illegitimate purposes.

On the date of these incidents, SPD Policy 12.050-POL-2 required that inquiries through ACCESS, or any other criminal justice record system, were only to be made for legitimate law enforcement purposes.

For the same reasons set forth above at Allegation #2, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**

## **Named Employee #1 - Allegation #4**

### **5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional**

It was alleged that NE#1 engaged in unprofessional behavior.

SPD Policy 5.001-POL-10 requires that SPD employees “strive to be professional.” The policy further instructs that “employees may not engage in behavior that undermines public trust in the Department, the officer, or other officers” whether on or off duty. (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.)

For all the reasons set forth above at Allegations #1 and #2, OPA finds that NE#1’s behavior undermined public trust in the Department and NE#1.

Even if, for argument’s sake, NE#1’s actions did not technically rise to the level of criminality, NE#1’s behavior was alarming, obsessive, and demonstrated NE#1’s willingness to abuse his access to restricted information to achieve a dubious personal goal. Police officers are frequently called to respond to incidents of domestic violence or emotional confrontations between current and former romantic partners. It is difficult to see how public trust would not be diminished in NE#1 to respond to such a situation reasonably. Moreover, even recognizing the strong emotions at play in personal, romantic relationships, it is difficult to ignore the intensity of NE#1’s repeated lapses in judgment during these events.

Accordingly, OPA recommends this allegation be Sustained.

Recommended Finding: **Sustained**