



CLOSED CASE SUMMARY

ISSUED DATE: APRIL 22, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0398

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	15.080-POL-2 Follow-Up Unit Investigation 1. Follow-Up Investigation Will Include Certain Minimum Components	Not Sustained - Management Action
# 2	5.001 Standards and Duties 5. Employees Complete Work in a Timely Manner	Not Sustained - Management Action

Named Employee #2

Allegation(s):		Director's Findings
# 1	15.080-POL-2 Follow-Up Unit Investigation 1. Follow-Up Investigation Will Include Certain Minimum Components	Allegation Removed
# 2	5.001 Standards and Duties 5. Employees Complete Work in a Timely Manner	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 Named Employee #1 (NE#1) and Unnamed Employee(s) did not conduct a thorough follow-up investigation for a VUCSA/DUI/hit and run incident in which the Complainant was the arresting officer. The Complainant also alleged that NE#1 and Unnamed Employee(s) did not file the case with the prosecutor within the statute of limitations, resulting in the suspect not being charged.

SUMMARY OF INVESTIGATION:

The Complainant, a Seattle Police Officer, filed a complaint with OPA alleging that a suspect in one of the Complainant's cases (the Suspect) was not charged because "someone in the SPD didn't do their job." Specifically, the Complainant wrote that, on July 6, 2019, he arrested the Suspect for DUI and a Hit and Run collision. The Complainant alleged that the Suspect submitted to a breath test and was also found to in possession of prescription drugs. The Complainant wrote that he booked the Suspect for investigation of Violation of the Uniform Controlled Substances Act (VUCSA), codified in the RCW under Chapter 69.50, as well as misdemeanor DUI. The Complainant alleged that an Assistant City Attorney later informed him that the case was not referred to the City Attorney's Office until August 21, 2021, after the expiration of the two-year statute of limitations. The Complainant alleged that he checked SPD's computer system and did "not see any indication the VUCSA was even filed with the county prosecutor."



OPA commenced this investigation. During its investigation, OPA reviewed the complaint, Incident/Offence Report (Incident Report) and supplements for the underlying incident, SPD's Mark 43 system, the King County Felony Case and Seattle Municipal Court portals, and Email correspondence. OPA also interviewed the SPD Data Center Manager, the Complainant, and NE#1.

i. Incident Report and Supplements

In his Incident Report, the Complainant stated that he investigated a DUI and Hit and Run on July 6, 2019. The Suspect allegedly "clipped" a parked car, then fled the scene, before colliding with a traffic diversion island. A witness noted that the Suspect appeared intoxicated and called 911. The Complainant responded and noted that the Suspect showed signs of intoxication. After conducting a Field Sobriety Test, the Complainant arrested the Suspect. During an inventory of the Suspect's vehicle, the Complainant found an "unlabeled prescription pill bottle" as well as currency, a cell phone, and card carrier. Pills found in the Suspect's car were determined to be a controlled substance and the Suspect allegedly admitted to providing them to another person. A subsequent search of the Suspect uncovered a "large amount of additional currency."

The Complainant booked the Suspect into jail on two counts of investigation for VUCSA, as well as misdemeanor charges for DUI and Hit and Run. The physical evidence was also submitted.

In supplements, the Complainant (1) had his arrest screened and approved by a supervisor, (2) wrote out a narrative of the incident, arrest, DUI tests, and hit and run collision, and (3) requested that prosecutors file VUCSA, DUI, and Hit and Run charges or, alternatively, prosecute the DUI and Hit and Run if VUCSA were to be declined.

ii. Case Records

OPA's review of the Mark 43 records showed that the case was received at the SPD Data Center on July 8, 2019, then forwarded the same day to the Traffic Collision Investigation Squad (TCIS), where a supervisor reclassified the case for assignment to the Narcotics Section. Other than entries unrelated to follow-up on the case—such as administrative entries—there was no substantive follow-up on the case until August 4, 2021, when NE#1 closed the case and referred it to the City Attorney.

A review of the case usage log in Mark 43 showed that, after the case was routed to the Narcotics Section, a Detective viewed the file on July 10, 16, and 24, of 2019. That same Detective viewed the case again on December 22, 2020, February 17, 2021, and May 11, 2021. NE#1 then viewed the case on August 4, 2021. The Complainant viewed the case on August 25, 2021, and a Sergeant viewed the file on August 26, 2021.

A review of the Narcotics Section supervisor records from 2019 to 2011 showed that NE#1 was the only Narcotics supervisor associated with the case.

iii. Court Portals

OPA reviewed the Court Portals for both King County Felony Case Information and Seattle Municipal Court (which handles misdemeanors). The King County Felony Case Information showed that the Suspect had two court appearances before the case was "refused" for charges. The Seattle Municipal Court Portal showed no record of the Suspect's case.



iv. OPA Interview – SPD Data Center Manager

OPA communicated with SPD's Data Center Manager, Witness Employee #1 (WE#1), by email, phone, and in-person interview. WE#1 wrote in an email to OPA that, based on the routing of the case to the Narcotics Section in 2019, the Narcotics Section would need to "explain the time between when they got the case in 2019 and when they referred it in 2021." WE#1 elaborated, that if the Narcotics Section "referred it for felony charges, it is not indicated anywhere in Mark43."

In a phone call with OPA, WE#1 stated that the case was assigned to the Narcotics Section until NE#1 modified it on August 4, 2021 and referred it to the City Attorney's Office. WE#1 stated that the case was declined because it was submitted past the two-year statute of limitations for misdemeanor charges.

During a follow-up interview with OPA, WE#1 elaborated on certain incident management system issues. Specifically, WE#1 stated that, due to staffing issues and lack of training, the issue in this case is not unique to NE#1. WE#1 explained that there is no "fail safe" regarding case management after a case is forwarded to follow-up units for assignment. Moreover, WE#1 explained some issues created by permissions in the system. WE#1 stated that if a follow-up unit sergeant is not managing cases, then this responsibility rests with others up the chain of command and that, if a sergeant leaves a unit or is unavailable, acting sergeants or newly assigned sergeants are not able to "manage" the case until they are given permissions in the system. WE#1 explained that this creates a gap where acting or newly assigned supervisors can view cases but cannot manage them.

WE#1 also stated that she would not be surprised if there were over 2,000 cases assigned to the Narcotics Section for follow-up. By way of comparison, WE#1 stated that, as of November 22, 2021, the General Investigation Unit had 16,225 open cases and 40,961 inactive cases assigned for follow up. WE#1 stated that three sergeants are responsible for the task of managing and assigning these cases.

WE#1 stated that there was a "power point presentation" provided to SPD detectives and follow-up unit sergeants when Mark 43 was first introduced, but that, to her knowledge, there had been no follow-up training despite numerous personnel changes. WE#1 stated that, unless new sergeants sought out training, none was provided.

v. OPA Interview – Complainant

OPA interviewed the Complainant. The Complainant stated that he contacted OPA because he was angry because he did a lot of work on this case and "didn't get the support from the follow up unit" even though he believed this was a "slam dunk" DUI case. The Complainant expressed frustration that cases were not being submitted in time to be prosecuted.

vi. OPA Interview – Named Employee #1

OPA interviewed NE#1. NE#1 stated that he had worked for SPD for approximately thirty-eight years and had been a patrol sergeant for over twenty-three years. NE#1 stated that he had no follow-up experience during his years in patrol. NE#1 stated that he was to the Narcotics Section in November 2020 as the Filing Unit Sergeant. NE#1 stated he did not request this reassignment but was reassigned after his prior position was eliminated.



NE#1 explained that his duties as Filing Unit Sergeant were to go through cases every day to find any arrest cases, review them, and see if they needed to be assigned for follow up. NE#1 stated that, after that, he reviewed open cases assigned to the Narcotics Section. NE#1 stated that when he first started in the Narcotics Section, he supervised four Detectives, but that number had since been reduced to two.

NE#1 stated that before he was assigned to the Narcotics Section, there were multiple sergeants, but that when he arrived there were no other sergeants available to provide him with direction or on-the-job training. NE#1 stated he did not receive any training when he arrived in the Narcotics Section. NE#1 also explained that when he arrived in November 2020, there was a backlog of 2400 cases dating back to 2016. NE#1 also stated that it "took me several months to just have them add my name onto Mark 43 to review cases. I was not able to review cases all this time." NE#1 stated that, afterwards, he received no training in Mark 43 and it took him weeks to learn how to operate the system. NE#1 stated that he was then able to start clearing the backlog of cases while keeping up with new cases. NE#1 estimated the current backlog to be down from 2400 cases to 2200 cases.

NE#1 explained that when a case is forwarded to a follow-up unit for additional investigation, the referring officers attach an "Alert Packet" in fewer than 10% of cases. NE#1 elaborated that an Alert Packet contains all the paperwork needed to file charges, but when an Alert Packet is not attached they need to "catch up with information." NE#1 described how he also perceives there to be a lack of communication between SPD and the King County Prosecuting Attorney's Office (KCPAO) with respect to having any kind of "alert system" for cases that need a "rush file."

NE#1 described that in-custody cases are the priority to get "rush filed," but that narcotics cases in which the amount recovered is less than a certain amount, KCPAO would not file charges. NE#1 stated that these cases are closed out as "exceptional" and referred to the City Attorney for misdemeanor charges.

NE#1 also explained that the case at issue here had been submitted to the Narcotics Section over a year before he was assigned to Narcotics. NE#1 stated that there was no Alert Packet submitted with this case and that per policy "every felony arrest case shall have an Alert Packet sent to the follow up unit." NE#1 stated he was not aware the report in this case had any Alert Packet at the time it was sent because there "was such a bedlam that we didn't have anybody to look at cases to determine what needs to be done."

NE#1 noted that this case was not acted on until he arrived in Narcotics and began working through the backlog. NE#1 stated that he started reviewing as many cases as he could and realized this case was "pretty close if it's not part statute of limitations." NE#1 stated that the combination of the statute of limitations and low amount of narcotics here informed his decision not to refer the case to KCPAO and clear it as "exceptional." NE#1 stated that he then referred it to the City Prosecutor and followed up by email because he did not have "much faith in the Mark 43 system." OPA located and reviewed an email dated August 20, 2021 that corroborated NE#1's statement.

NE#1 stated that he did not submit this case prior to the expiration of the statute of limitations due to "lack of notification." NE#1 stated the case went to TCIS first before being routed to Narcotics without an Alert Packet. NE#1 explained that the case would have then just sat in the queue. NE#1 stated he then had to learn how to use Mark 43 before he could start clearing out cases noting that, with the amount of cases to clear, "it's like eating an elephant. One spoonful at a time."

NE#1 admitted that there are no assurances that there are no other cases with the same statute of limitations issues in the backlog, nor does NE#1 know if there is a way in Mark 43 to prioritize cases other than by numerical order.



Moreover, NE#1 explained that he does not know a way in Mark 43 to know if there is an arrested suspect until he opens the file, which is “time consuming” to “look into 2,400 cases.” NE#1 noted that he has had administrative assistants helping him, but the “ultimate disposition decision” rests with NE#1.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged that NE#1 failed to complete the specified minimum components of a follow-up investigation.

SPD Policy 15.080-POL-2(1) states that follow-up investigations shall include specified minimum components and the policy sets forth what those components are. As a general matter, the policy has three general categories. First, it sets forth the analysis and review that it expects follow-up unit detectives to conduct. This includes: reviewing previous and related reports; collecting the criminal history of the subject and including it in the file; and making an attempt to link the subject to other crimes using a “modus operandi analysis.” Second, the policy provides guidance for investigations. This guidance includes: contacting and interviewing witnesses, victims, and suspects all when appropriate, as well as interviewing uniformed personnel when necessary; and, as a general matter, viewing the scene of the crime, conducting searches in a systematic and thorough manner, and collecting and properly processing any evidence located. Third, the policy sets forth preferred practices for case preparation. These practices include: preparing the case files to meet standards set forth by prosecuting attorneys’ offices; and responding to requests for additional information from prosecutors.

Specifically, the Complainant alleged that NE#1 failed to refer the case to either the KCPAO or City Attorney’s Office within the two-year statute of limitations.

OPA agrees that the failure to act on this case represents a process failure but cannot find that this failure lies with NE#1. Both NE#1 and WE#1 described a situation in which a shrinking number of staff members must address a considerable backlog of cases in addition to new referrals. Moreover, both NE#1 and WE#1 explained that the detectives and supervisors tasked with addressing the backlog have not received adequate training in the Mark 43 system and face considerable delays in gaining access to the system and cases that they need to do their job.

NE#1 described starting as the only sergeant in his unit, without any experience in a follow-up unit or formal training in the Mark 43 system. NE#1 stated that there were no other sergeants available to provide him with direction or on-the-job training. NE#1 elaborated that, after being assigned to the Narcotics Section, he alone was responsible for the final dispositions of new cases and a backlog of 2,400 cases—some dating back about four years—but for nearly two months was unable to even review cases because he was waiting to have his name added to the system.

Given these circumstances, it was inevitable that NE#1 would be unable to meet some case timelines. Indeed, the case at issue here sat unprogressed for well over a year before NE#1 was even assigned to Narcotics. By the time NE#1 acquired access to Mark 43, this case—with about six months left in its statute of limitations—sat in a haystack of 2,400 other cases with new cases coming in. The usage log showed that NE#1 first viewed the case on August 4, 2021 and forwarded it to the City Attorney’s Office the very same day.



OPA will not speculate as to whether there could have been a better way for NE#1 to triage the considerable backlog of cases that he faced or a more efficient method of using the Mark 43 system to manage these cases. Neither NE#1 nor WE#1 suggested that there was. Even had there been, NE#1 was not afforded any training to show him how, nor does it appear that anyone else assigned to the Narcotics Section before NE#1 had discovered such efficiencies. Accordingly, OPA recommends that this allegation be Not Sustained and issues the following Management Action Recommendation:

- **Management Action:** SPD should develop a comprehensive plan to improve the management of cases routed to follow-up units for investigation. In doing so, SPD should consider case management best practices employed by other large departments and determine what, if any, outside expertise would be relevant for improving the management of these cases. At a minimum, SPD should consider updates and revisions that address: (1) the timely provision of access and permissions in Mark 43 and other relevant systems for employees assigned to follow-up units; (2) the development and provision of comprehensive training in Mark 43 and other relevant systems for employees assigned to follow-up units; (3) automated safeguards to ensure that cases are not neglected beyond their statute of limitations; (4) improved processes or training to ensure that officers conducting a primary investigation complete an Alert Packet for appropriate cases referred to a follow-up unit; (5) coordinate with the KCPAO and City Attorney's Office to develop an effective prioritization for cases referred to follow-up units; and (6) the reallocation of sworn and civilian employee resources to follow-up units to effectively manage the volume of cases that these units receive.

Recommended Finding: **Not Sustained - Management Action**

Named Employee #1 - Allegation #2

5.001 Standards and Duties 5. Employees Complete Work in a Timely Manner

The Complainant alleged that NE#1 failed to work in a timely manner.

SPD Policy 5.001-POL-5 generally requires that SPD employees complete their work in a timely manner. The policy further states that "[a]bsent exigent circumstances or supervisory approval, employees will complete all required duties and official reports before going off duty." (SPD Policy 5.001-POL-5.)

NE#1 did not fail to work in a timely manner. To the contrary, the fact that NE#1 has kept up with incoming cases, while reducing the backlog of cases created prior to his assignment to Narcotics, suggests that he is working in as timely a manner as could be expected under the circumstances he confronted.

For the reasons set forth above at Named Employee #1, Allegation #1, OPA recommends that this allegation be Not Sustained – Management Action.

Recommended Finding: **Not Sustained - Management Action**

Named Employee #2 - Allegation #1

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

The Complainant alleged that NE#2, an unidentified employee, failed to complete the specified minimum components of a follow-up investigation.



To the extent this allegation is against other employees who may have been responsible for the case at issue here failing to meet the statute of limitations, this allegation is subsumed by the Management Action Recommendation issued in for Named Employee #1, Allegation #1.

Accordingly, OPA is removing this allegation.

Recommended Finding: **Allegation Removed**

Named Employee #2 - Allegation #2

5.001 Standards and Duties 5. Employees Complete Work in a Timely Manner

The Complainant alleged that NE#2, an unidentified employee, failed to work in a timely manner.

To the extent this allegation is against other employees who may have been responsible for the case at issue here failing to meet the statute of limitations, this allegation is subsumed by the Management Action Recommendation issued in for Named Employee #1, Allegation #1.

Accordingly, OPA is removing this allegation.

Recommended Finding: **Allegation Removed**