



CLOSED CASE SUMMARY

ISSUED DATE: MAY 5, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0422

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.002 Responsibilities of Employees Concerning Alleged Policy Violations 4. Retaliation is Prohibited	Not Sustained - Unfounded
# 2	5.001 - Standards and Duties 10. Employees Will Strive to be Professional	Not Sustained - Unfounded

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) retaliated against him and was unprofessional.

SUMMARY OF INVESTIGATION:

The Complainant—a Public Information Officer for a Sheriff's Office—called OPA and alleged that NE#1 called him at his personal cell phone number, yelled at him, and threatened to have his Sergeant call him. OPA commenced this investigation.

During its investigation, OPA reviewed the complaint, an underlying Sheriff's Office Incident Report, a prior OPA investigation, email correspondence, and a Seattle Times News article. OPA also interviewed the Complainant and NE#1. A witness Seattle Times reporter (Reporter) declined to be interviewed.

This case involved NE#1's reaction to the Complainant identifying him by name to the Reporter. Unfortunately, there was some confusion regarding information the Reporter received from the Complainant. The Reporter mistook NE#1 for a different person—a former SPD employee who had resigned from the Department prior to a disciplinary hearing.

a. The Complainant

OPA interviewed the Complainant. The Complainant stated that he's a Public Information Officer for a Sheriff's Office and he is responsible for responding to media outlets requesting information. According to the Complainant, on the day of incident, the Complainant received a request from the Reporter requesting information about an OPA investigation that had originated from the Sheriff's Office. The Complainant stated that he read the Sheriff's Office report to the Reporter and NE#1 was listed in the narrative of the report. According to the Complainant, the report indicated that NE#1 had done nothing wrong and the Complainant relayed this information to the Reporter.



The Complainant stated that he later received an email from the Reporter and a phone call on his personal cell phone from NE#1. The Complainant recalled that he understood from this communication that the Reporter had contacted NE#1 “assuming” that NE#1 was the officer who had “gotten in trouble.” The Complainant explained that the Reporter informed him that NE#1 was “really upset” by this.

The Complainant stated that he answered his phone, and that NE#1 questioned why the Complainant told the Reporter that NE#1 had been purchasing narcotics. The Complainant recalled that he denied saying that to the Reporter. The Complainant stated that NE#1 then asked why the Complainant had released his name, to which the Complainant responded, “your name is in the police report.” The Complainant stated that he told NE#1 that the case was closed, charges were not filed, and an investigation was not conducted by the Sheriff’s Office because it was outside their jurisdiction. The Complainant said he told NE#1 that he had no details to read about who did any wrongdoing. The Complainant recalled that NE#1 was “upset, he wasn’t yelling but you could tell he was angry.” The Complainant recounted that at some point NE#1 stated, “well look here [Complainant], you’re gonna be giving people’s names out, you shouldn’t be doing that.”

The Complainant told OPA that he became upset and questioned NE#1’s reason for yelling at the Complainant when NE#1 was not taking the time to listen to the Complainant. The Complainant noted “I didn’t tell the Reporter that [NE#1] did anything at all, and I actually read the report to the Reporter on the phone, and um, later on the Reporter admitted that it was his fault, he misunderstood and just assumed that [NE#1] had done wrongdoing. And that I had never told him that he had.” The Complainant stated that NE#1 would not listen to his explanation.

The Complainant stated that he told NE#1 “Look man, you’re calling me to chew me out. I said you don’t understand what my job is. I have to give out public information when it’s a closed case like this.” The Complainant stated that NE#1 responded “so you just give out people’s names?” and the Complainant replied “yeah, your name was on the report... Well, you want me to lie?” The Complainant told OPA that he made this comment sarcastically. The Complainant stated that NE#1 then said, “how dare you accuse me of asking you to lie?” to which the Complainant responded, “look man, you’re calling me to chew me out, I don’t have time for that.” The Complainant recalled that NE#1 replied “Well, I’m [going to] have my Sergeant call you.” The Complainant stated that he never heard back from either NE#1 or his Sergeant.

b. NE#1

OPA interviewed NE#1 twice. NE#1’s recollection of his interaction with the Complainant was broadly consistent with the Complainant’s recollection, but with a slightly different interpretation of the events.

NE#1 stated that he received a voicemail from the Reporter stating that he was going to write a story that night about NE#1 getting fired for using illegal drugs. NE#1 stated that he then found an email from the Reporter seeking a comment from NE#1 before the story came out.

NE#1 stated that he called the Reporter and told him that “it wasn’t me,” but that the Reporter provided NE#1 with personal information about NE#1—such as his birthdate, phone number, email address, and full name—and told NE#1 that he received this information from the Complainant. NE#1 stated that the Reporter did not believe NE#1’s denial and, instead, thought NE#1 was “trying to cover it up” due to embarrassment.



NE#1 stated that, after getting of the call with the Reporter, he got the Complainant's personal cell phone number from a colleague who worked at the same Sheriff's Office as the Complainant. The Complainant stated, "I figured if he was going to give a news reporter my personal information over a phone call, he certainly wouldn't mind another police officer to give them a call over a cell phone."

NE#1's recollection of his phone call with the Complainant was similar to the Complainant's recollection. NE#1 stated "[The Complainant] was getting upset. I never cursed at him. I never yelled at him. I may have [had] a concern[ed] voice, but he finally said to me, I can recall he said 'hey, what do you want me to do, lie for you?'" NE#1 recounted that, at that moment, he told the Complainant "I'm going to have my supervisors handle this, call your supervisor, since obviously you think that I want you to lie for [me]. So I just hung up on him. I called my supervisor."

Ultimately, NE#1's chain of command contacted the Reporter and the Reporter's story ultimately did not name NE#1.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.002 Responsibilities of Employees Concerning Alleged Policy Violations 4. Retaliation is Prohibited

The Complainant alleged that NE#1 retaliated against him by threatening to contact a supervisor.

SPD Policy broadly prohibits retaliating against any person who engages in any lawful behavior or who engages in—or communicates an intent to engage in—a number of specified activities such as making a public disclosure request or publicly criticizing an SPD employee. See SPD Policy 5.002-POL-4. "Retaliation includes discouragement, intimidation, coercion, or undertaking any adverse action against any person because the person engaged in any of the activity set forth above. This prohibition specifically includes interference with any administrative, civil, or criminal investigation." *Id.*

The Complainant and NE#1's recollection of this interaction is very similar. At bottom, the conversation between the Complainant and NE#1 had deteriorated (this is analyzed under Named Employee #1, Allegation #2), and NE#1 stated that he would have his Sergeant contact the Sheriff's Office. Ultimately, this never happened. NE#1 did reach out to his chain of command, but NE#1's chain of command was able to correct the misunderstanding directly with the Reporter.

It was not retaliation for NE#1 to tell the Complainant that he would "have my Sergeant call you." Even outside an organization with a paramilitary structure like SPD, see SPD Policy 1.020(8) ("Employees shall communicate through the chain of command."), it is commonplace in work settings to elevate disagreements to supervisory employees to resolve from a place of greater experience or dispassion. Moreover, the core of the Complainant's allegation against NE#1 was his allegation that NE#1 behaved unprofessionally, not that the Complainant felt "intimidation" or "coercion" from NE#1 involving supervisory employees.

Accordingly, this allegation is Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**



Named Employee #1 - Allegation #2

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

The Complainant alleged that NE#1 was unprofessional.

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.)

OPA recognizes that this was a tense situation for NE#1 that involved an element of time sensitivity: a reporter for a widely-read publication had contacted NE#1 late in the afternoon on a Friday for comment on a story that was going to be published that evening wrongly stating that NE#1 had resigned prior to a disciplinary hearing for narcotics use. Any sworn law enforcement officer would have been understandably disturbed by this. OPA is also cognizant of the fact that this situation did not involve NE#1’s performance of routine professional functions, but instead touched on the deeply personal possibility that NE#1’s name would be imminently tarnished in a widely circulated newspaper.

OPA also recognizes that NE#1 could have handled this situation better. Specifically, NE#1 could have immediately reported his discussion with the Reporter to his chain of command so that they could correct the Reporter’s mistaken information directly. This was ultimately the resolution of the issue. Instead, NE#1 chose, in the first instance, to use a backchannel to get a phone number for a public information officer at a government agency, then called the Complainant. NE#1 said he did so to “help [the Complainant] from making a major mistake.” There is no recording of the phone call between NE#1 and the Complainant, so OPA cannot conclusively establish what was said, by whom, and in what tone of voice. But given the nature of the mistaken information and the descriptions of the call by NE#1 and the Complainant, OPA believes this was a tense discussion that, more likely than not, quickly devolved into “sarcasm” (admitted by the Complainant) and a “concerned voice” (admitted by NE#1). From its inception, the phone call between NE#1 and the Complainant was ill-advised and unlikely to be a productive way to resolve this issue.

However, even as described by the Complainant, NE#1 did not do or say anything on this phone call that “undermin[ed] public trust in the Department, the officer, or other officers.” (SPD Policy 5.001-POL-10.) At worst, NE#1 was “upset, he wasn’t yelling but you could tell he was angry,” short, perhaps a little condescending, did not listen to the Complainant’s explanation, stated that he would elevate the issue to a supervisor, and hung up the phone. On these specific facts involving a deeply personal issue, OPA is hesitant to find that NE#1’s imperfect behavior rose to the level of unprofessionalism.

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

Recommended Finding: **Not Sustained - Unfounded**