



CLOSED CASE SUMMARY

ISSUED DATE: JULY 7, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2021OPA-0550

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 2. Employees Must Adhere to Laws, City Policy and Department Policy	Not Sustained - Inconclusive
# 2	5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional	Not Sustained - Training Referral
# 3	5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5.002-POL 6. Employees Will Report Alleged Violations	Not Sustained - Training Referral

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:

OPA alleged that Named Employee #1 (NE#1) was involved in a traffic collision in 2019, which the other party to the collision (Community Member #1 or CM#1) alleged was caused by NE#1's engagement in road rage. CM#1 alleged that NE#1 drove along the shoulder of a road so as to cut off CM#1, then braked suddenly, causing NE#1's vehicle and CM#1's vehicle to collide. Both parties were allegedly ticketed for their involvement in the incident.

ADMINISTRATIVE NOTE:

Due to present OPA staff limitations, this is an abbreviated Director's Certification Memorandum. At the Director's discretion, an expanded Director's Certification Memorandum may be completed at a later time.

ANALYSIS AND CONCLUSIONS:

Following an investigation that the Office of Inspector General certified as thorough, timely, and objective, OPA's analysis is that the preponderance of the evidence does not establish that any policy violations occurred or rose to the level of misconduct.

Named Employee #1 - Allegation #1

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

SPD Policy 5.001-POL-2 requires that employees adhere to laws, City policy, and Department policy.



This allegation was premised on NE#1 allegedly driving on an improved shoulder in violation of law. NE#1 admitted to driving on the shoulder. NE#1 received a traffic citation for this infraction, but both NE#1 and CM#1 reported this ticket was dismissed. Moreover, NE#1 claimed that he drove on the shoulder in order to “de-escalate” after CM#1 confronted him for honking his horn at her. NE#1 stated that he was in fear for his safety after CM#1 exited her vehicle and approached NE#1’s vehicle. CM#1 admitted to this behavior and a non-party witness described CM#1’s behavior as “unhinged.”

Although NE#1 likely technically violated a traffic ordinance, OPA cannot conclude that doing so in this instance rose to the level of violation of law because NE#1 plausibly stated a privilege of either necessity or defense. However, the allegations against NE#1 were brought to OPA’s attention about two and a half years after the incident, which affected the memories of NE#1, CM#1, and non-parties. The information available to OPA at this point is insufficiently detailed to reach a finding on this allegation.

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

Recommended Finding: **Not Sustained - Inconclusive**

Named Employee #1 - Allegation #2

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

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.)

NE#1 described his decision to drive on an improved shoulder in terms of de-escalation and self-defense. Although OPA finds these defenses to the traffic citation to be plausible (see Allegation #1, above), OPA finds that NE#1’s actions likely escalated the encounter between himself and CM#1. OPA finds that there were likely methods of addressing CM#1’s behavior that would have avoided escalating the situation by driving around CM#1’s vehicle.

However, even if NE#1’s behavior possibly violated policy in this instance, OPA finds that it was not willful misconduct. Accordingly, OPA recommends that this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 5.001-POL-10 with NE#1, and provide any further retraining and counseling that it deems appropriate. This training and counseling should focus on NE#1’s obligation—on or off duty—to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” The retraining and counseling conducted should be documented, and this documentation should be maintained in BlueTeam.

Recommended Finding: **Not Sustained - Training Referral**



Named Employee #1 - Allegation #3

5.002 - Responsibilities of Employees Concerning Alleged Policy Violations 5.002-POL 6. Employees Will Report Alleged Violations

SPD Policy 5.002-POL-6 concerns the reporting of misconduct by Department employees. It specifies that minor misconduct must be reported by the employee to a supervisor, while potential serious misconduct must be reported to a supervisor or directly to OPA. (SPD Policy 5.002-POL-6.) The policy further states the following: “Employees who witness or learn of a violation of public trust or an allegation of a violation of public trust will take action to prevent aggravation of the incident or loss of evidence that could prove or disprove the allegation.” (Id.)

NE#1 admitted that he did not inform a supervisor that he had received this traffic citation. NE#1 explained that he did not believe he had an obligation to do so except in criminal situations. Although the best practice would have been for NE#1 to inform a supervisor that he had received—and would be contesting—the traffic citation, OPA finds NE#1’s confusion to be understandable as he was off-duty and the traffic citation was not criminal in nature. *Compare* SPD Policy 5.002-POL-6 (“Employees will report any alleged minor policy violation to a supervisor.”), *with* SPD Policy 5.002-POL-8 (“Employees will report to their supervisor, in writing, as soon as practical . . . [when] They are the subject, or they believe they may be the subject of a . . . criminal traffic citation.”)

OPA finds that NE#1 had a technical obligation to report his traffic citation to a supervisor as an “alleged minor policy violation,” the underlying alleged violation being a minor violation of SPD Policy 5.001-POL-2 for failing to adhere to the traffic laws. However, for the reasons stated above, this possible violation was not willful misconduct but instead represented a good-faith misunderstanding of NE#1’s reporting obligations.

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

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review SPD Policy 5.002-POL-6 with NE#1, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling conducted should be documented, and this documentation should be maintained in BlueTeam.

Recommended Finding: **Not Sustained - Training Referral**