



CLOSED CASE SUMMARY

ISSUED DATE: JULY 27, 2022

FROM: INTERIM DIRECTOR GRÁINNE PERKINS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0077

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.001 - Standards and Duties 5.001-POL 14. Retaliation is prohibited	Not Sustained - Training Referral
# 2	5.001 - Standards and Duties 5.001-POL 10. Employees Will Strive to be Professional	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 on February 4, 2022, Named Employee #1 (NE#1) spoke with the Complainant alone, during which time NE#1 offered to reduce the Complainant's criminal charges if he dropped his complaint against her in a previous OPA case.

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 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.)



The Complainant alleged that, after he arrived at SPD Headquarters for a proffer interview, NE#1 spoke to him alone prior to his attorney's arrival. The Complainant alleged that NE#1 offered to reduce the Complainant's criminal charges if he dropped his complaint against her in a previous OPA case (2021OPA-0534). OPA reached out to the Complainant's attorney to arrange an interview, but the Complainant's attorney responded that his client wished to withdraw his complaints. OPA subsequently received two emails from the Complainant stating that he wished to withdraw his complaints. Thereafter, the Complainant contacted OPA multiple times with a request to pursue his allegations, but the Complainant's attorney told OPA to disregard these requests. Accordingly, OPA was unable to interview the Complainant.

OPA interviewed NE#1. For the reasons set forth in 2021OPA-0534, OPA does not find the Complainant in this case to be credible and, instead, finds by a preponderance of the evidence that the Complainant is filing complaints against NE#1 in an attempt to discredit the criminal case against him. Accordingly, the facts provided by NE#1 are not contradicted by any credible evidence. In her OPA interview, NE#1 stated that she was investigating a series of robberies and arrested the Complainant based on probable cause that he had participated in those robberies. See 2021OPA-0534. On February 4, 2022, the Complainant voluntarily appeared at SPD Headquarters for a scheduled proffer interview with NE#1 as well as other law enforcement officers and prosecutors.

NE#1 stated that the Complainant arrived at SPD Headquarters and she went downstairs to escort him to the location of the proffer interview. NE#1 stated that she had a short conversation with the Complainant about the schedule of the day and the mechanics of a proffer interview. NE#1 stated that she informed the Complainant about the importance of honesty in a proffer interview and referenced that she was aware he had been dishonest in the past. Specifically, NE#1 described the conversation as follows:

I made reference to the fact that he – you know, through the course of my investigation, I had seen that he has been dishonest before and referenced the incident, the previous OPA incident, when I told him I was a King County Sheriff's Officer. And the intent of that conversation was to let him know that from this point forward in the proffer negotiations that everybody needed to be completely truthful in what we were saying.

NE#1 denied that she offered to reduce the charges against the Complainant in exchange for him dropping the complaint against her. Specifically, NE#1 stated that, as a police officer—as opposed to a prosecutor—she would not be able to reduce any person's charges, so such a *quid pro quo* would have been impossible.

Ultimately, the proffer interview was alter terminated when it was determined that the information the Complainant provided was unreliable and possibly gathered from public disclosure requests.

OPA credits NE#1's recollection of the conversation between herself and the Complainant. Based on what NE#1 stated to the Complainant, the only plausible allegation of retaliation would be the claim that NE#1 was suggesting that the success or failure of the Complainant's proffer was contingent on the Complainant withdrawing his OPA complaint against NE#1. This allegation is not credible. First, as noted by NE#1, any reduction in charges would be a decision made by a prosecutor, not a police officer. Second, NE#1 recounted that her statement to the Complainant emphasized the importance of honesty in the future and was not a request to withdraw a complaint. Finally, the Complainant was represented by an attorney at the proffer interview and during this investigation. Had the Complainant genuinely understood NE#1's limited reference to the prior OPA complaint as a retaliatory request to withdraw an OPA complaint, this would have been relevant to pursue at both the proffer interview and during the



OPA investigation. Instead, the Complainant's attorney has repeatedly advised OPA to disregard and withdraw the Complainant's allegations.

NE#1's short reference to the prior OPA complaint did not constitute retaliation. However, OPA finds that NE#1 did not engage in best practices during her interaction with the Complainant. First, NE#1 stated she escorted the Complainant alone. Especially in light of the fact that the Complainant's attorney was not present, NE#1 would have been better advised to have another officer present with her to escort the Complainant through Headquarters. Second, NE#1 should not have engaged the Complainant in any substantive conversation while alone with him. Although NE#1 may genuinely believe that the short conversation she had with the Complainant was not "a conversation of substance," OPA advises her otherwise. By her own admission, in this short conversation NE#1 both gave the Complainant advice ("be completely truthful") and referenced an incident that she was aware was then under investigation by OPA. However innocuous NE#1 may have believed these comments to be, such commentary could easily be misunderstood or—as is more likely than not in this case—weaponized against her. Finally, NE#1 was aware that the prior incident was being investigated by OPA because she was emailed a classification notice in that matter on January 3, 2022. At the bottom of that classification notice was an order reading in part: "The facts and circumstances of the incident referenced in this notice must be kept confidential and may not be discussed with any other individuals who may have been involved." These instructions serve dual purposes, both protecting the integrity of OPA's investigations *and* involved employees from allegations of retaliation, such as here.

Based on the order in the OPA classification notice for the prior case and NE#1's admission that she referenced this case in a discussion with the Complainant, OPA finds that there was a possible, but not willful, violation of policy that did not amount to 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 5.0001-POL-14 with NE#1, and provide any further retraining and counseling that it deems appropriate. The retraining and counseling should include a discussion about the importance of not discussing the circumstances underlying an OPA investigation with other involved individuals. 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 #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 conduct underlying this allegation is duplicative of the conduct set forth above for Named Employee #1, Allegation #1. Accordingly, OPA is removing this allegation.

Recommended Finding: **Allegation Removed**