

**Issued Date:** MARCH 20, 2024

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



**Case Number:** 2022OPA-0093

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

### **Named Employee #1**

1. **Allegation #1:** 5.040 - EEO Complaints and Investigations 5.040-PRO-1 EEO Investigations
    - a. **Finding:** Not Sustained - Unfounded
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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.**

### **Executive Summary:**

The Complainant—a former SPD Police Recruit—alleged Named Employee #1 (NE#1)—an unknown employee—violated SPD policy by failing to properly notify him about an EEO investigation in which he was named.

### **Administrative Note:**

OPA was unable to identify a named employee subject to the allegation raised by the Complainant. Accordingly, the case is not governed by a contractual 180-day deadline.

On October 28, 2022, the Office of Inspector General certified this investigation as thorough, timely, and objective.

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

The Complainant filed a web-based complaint with OPA. The Complainant identified himself as a former SPD recruit who was terminated by the Department while he was enrolled in the Washington State Basic Law Enforcement Academy (BLEA). The Complainant wrote he reported that another SPD recruit (Recruit #1) engaged in misconduct and, in retaliation, Recruit #1 accused him of “3rd party sexual harassment.” The Complainant wrote he was terminated after SPD conducted an EEO investigation against him. The Complainant alleged the EEO investigation had procedural irregularities, such as not providing him with a mitigation memo, not

being advised in writing that an EEO investigation was opened, and not being informed that an EEO complaint was filed. The Complainant also alleged his case had a “pre-determined outcome” and that SPD’s EEO investigator (Witness Employee #1 or WE#1) omitted evidence from her investigation and did not seek to interview him.

OPA opened an investigation. During its investigation, OPA reviewed the complaint, documents attached to OPA case number 2021OPA-0321, as well as SPD and City policies. OPA also interviewed WE#1 and the Complainant.

## **1. Complaint**

The Complainant filed a web-based complaint with OPA. In summary, the Complainant wrote the following.

The Complainant was an SPD Police recruit at BLEA in June 2021. He reported Recruit #1 engaged in misconduct while at BLEA, resulting in Recruit #1’s removal. Recruit #1 then claimed the Complainant engaged in sexual harassment.

The Complainant wrote that he was removed from the academy while BLEA investigated. The Complainant wrote BLEA interviewed him and accepted evidence from him, then reinstated him a week later. The Complainant was placed on administrative leave by SPD in July 2021 as SPD reinvestigated the allegations. The Complainant wrote he received “zero communication” about his case until December 2021, when he was served with a letter recommending his termination. The Complainant contacted OPA and was provided with the case number 2021OPA-0321 associated with him. The Complainant later learned that OPA processed this matter as a Supervisor Action by returning the allegations to his chain of command. The Complainant alleged his supervisors did not contact him about the OPA investigation until he was notified that his chain of command recommended his termination.

The Complainant outlined specific procedural irregularities in his investigation that were all based on SPD’s EEO Investigation policy. Specifically, the Complainant wrote he did not receive a mitigation memorandum, was not notified in writing that an EEO complaint was filed or would be investigated, and was not advised about the prohibition on retaliation. The Complainant also wrote he, “was never interviewed throughout this entire investigation,” even though other witnesses were interviewed by both BLEA and WE#1. The Complainant alleged SPD did not consider the exonerating evidence he provided to BLEA, even though his BLEA interview was cited in his SPD investigation.

The Complainant wrote his case was “falsely put together” and had a “pre-determined outcome” that omitted evidence in his favor. The Complainant also noted that an “Administrative Memo” written by WE#1 included a file number “2021EEO-0016,” which proved this was “indeed an EEO investigation.”

The Complainant wrote that he provided exonerating information at his February 2022 name clearing hearing. The Complainant alleged the “Seattle Police Department” retaliated against him from pursuing new employment.”

## **2. OPA Interview – Complainant**

OPA spoke with the Complainant twice during this investigation. The first time was an unrecorded discussion during OPA’s intake, during which the Complainant stated he could not speak for long but would send documents related to his case. The Complainant stated his complaint was specific to the HR/EEO investigation that occurred and he believed the investigation did not comply with EEO policies. The Complainant said he believed WE#1 violated EEO policies because he was never contacted or interviewed, despite the fact BLEA investigated the incident and cleared him of wrongdoing. Despite this, the Complainant stated SPD put him on leave while it reinvestigated the incident. OPA did not receive any follow-up documents from the Complainant during its intake.

During the OPA investigation, the Complainant provided an audio-recorded phone interview. The Complainant told OPA about paperwork he wanted included in his HR file. OPA reviewed the material the Complainant wanted to submit and determined this paperwork was already included in the BLEA investigation, which was already attached to the OPA case file.

The Complainant reiterated his allegations. Specifically, that he reported Recruit #1 for cheating, and Recruit #1 subsequently accused him of sexually harassing female recruits at BLEA. BLEA investigated the sexual harassment allegations and the Complainant provided evidence in his defense. BLEA reinstated the Complainant, but three days before his graduation, the SPD placed the Complainant on administrative leave because SPD was not satisfied with BLEA’s investigation.

The Complainant stated he contacted HR multiple times offering to provide evidence in his defense, but HR did not respond. The Complainant recounted being interviewed about the sexual harassment allegations at BLEA. The Complainant stated he was told he would be interviewed regarding the other recruit’s misconduct but was then interviewed about the sexual harassment allegations against himself. The Complainant stated he was unprepared for his interview because of the switch. The Complainant also stated the SPD investigation did not consider all the evidence and he considered the allegations against him absurd.

The Complainant stated the investigation against him had a predetermined outcome, and that WE#1 displayed bias against him because she did not make eye contact with him during his name clearing hearing.

The Complainant acknowledged being interviewed twice at BLEA, once by BLEA staff, and a second time with an SPD sergeant present. The Complainant reemphasized that he was not prepared for his interviews because he was told the interviews were about a different subject. The Complainant also believed that a statement in his SPD administrative investigation that he has

“anger issues” was intentionally added to make it difficult for him to seek employment elsewhere. The Complainant also felt the allegations against him were not corroborated by other recruit witnesses.

### **3. OPA Case Number 2021OPA-0321**

OPA opened a case number, 2021OPA-0321, concerning the sexual harassment allegations made against him. Among other things, the OPA file contained BLEA’s Investigation Finding Report and the SPD Administrative Investigation Finding Memorandum. The OPA file was ultimately processed as a Supervisor Action, which meant the allegations were returned to the Complainant’s chain of command to process.

#### **a. BLEA Investigation Finding Report**

BLEA investigated the allegations against the Complainant. Among other things, the BLEA investigation reviewed accusing statements made by Recruit #1 against the Complainant, interviewed two female BLEA recruits that were the alleged victims, and interviewed four witness recruits. The BLEA investigation also interviewed the Complainant.

Overall, the BLEA investigation determined that there was a “possibility” the Complainant made “inappropriate comments,” which the Complainant denied. However, the BLEA investigation noted there was a lack of corroboration from potential victims and witnesses.

#### **b. SPD Administrative Investigation Finding Memorandum**

WE#1 also investigated the allegations against the Complainant. WE#1 addressed her memorandum to an SPD sworn Captain and Lieutenant and noted she completed her investigation under the direction of an SPD sworn Captain. The Subject of the Memorandum was “Police Recruit [Complainant’s name] – Administrative Investigation.”

WE#1 interviewed six BLEA recruits, including Recruit #1. WE#1 also requested an interview with another BLEA recruit (Recruit #3), but was denied by her employing agency, so WE#1 reviewed a BLEA interview with that recruit.

Recruit #1 stated the Complainant made statements about female recruits’ bodies, including:

- “She’s very hot um look at her body. Wow. I don’t know what she’s doing. You know she just had a baby three months ago, but I can’t even get up because I’m aroused.”
- Comments about which female recruits had the biggest breasts.
- “If she tasted my dick, she won’t be a lesbian anymore.”
- “I really want to sleep with her.”

Recruit #1 stated the last of these comments was made about a female recruit (Recruit #2). Recruit #1 stated that Recruit #2 spoke with him about the Complainant, stating, "I don't know what's wrong with him. He's fixated on me I think." Recruit #1 also said Recruit #2 stated about the Complainant, "He's crazy. He's fixated on me."

Recruit #1 also stated the Complainant made the following comment about another female recruit (Recruit #3): "The Academy uniform does not give your body, it just takes form your body. It doesn't show because you have nice breasts."

WE#1 interviewed Recruit #2. WE#1 wrote that, during the interview, Recruit #2 became visibly upset and expressed concern for her safety based on fear of retaliation from the Complainant. Recruit #2 recounted the Complainant stating the following to her over the phone:

- "So, do you walk around your house naked?"
- When Recruit #2 advised the Complainant she was in a dating relationship, he stated: "It sounds like he wanted to get into your pants more than anything."
- The Complainant told Recruit #2 that he told Recruit #3 that, "She had her tits hanging out."

Recruit #2 also stated Recruit #1 told her the Complainant made sexual comments about her. Recruit #2 said she told a male recruit (Recruit #4) that she was going to confront the Complainant about his comments but Recruit #4 offered to speak to the Complainant for her. Recruit #2 also gave examples of times she stated the Complainant was "quick to display anger." After being read the BLEA Academy definition of sexual harassment, Recruit #2 agreed the Complainant's comments were sexual harassment.

WE#1 reviewed Recruit #3's BLEA interview. Recruit #3 stated that the Complainant made a comment to her about her, "breasts outside her uniform." Recruit #3 stated she was not bothered by this comment and, "kind of brushed it off." Recruit #3 stated the Complainant apologized the next day for this comment.

WE#1 interviewed Recruit #4. Recruit #4 stated Recruit #2 was a passive person who played along with the Complainant's comments, but Recruit #4 could see Recruit #2 was annoyed by the Complainant. Recruit #4 said he spoke to the Complainant on Recruit #2's behalf, telling the Complainant that he needed to stop as Recruit #2 felt the Complainant was flirting with her.

WE#1 interviewed three other recruits. One stated she heard two male students state the Complainant made comments about the appearance of Recruit #2 and Recruit #3. The other two recruits denied knowledge of Recruit #2 making sexually harassment comments.

WE#1 concluded, that, "Based on the witness statements, and the applicable standards, there is a preponderance [of] the evidence to indicate that [the Complainant] made sexually harassing statements to and/or about female Police Recruits while in the BLEA workspace and/or while socializing with BLEA Police Recruits outside the workplace."

### **c. OPA Email Communication and Supervisor Action Notification**

OPA reviewed email communication from July 2021 between OPA's then-Director and then-Assistant Director concerning the processing of this case. The email communication indicated that OPA processed the allegations against the Complainant as a Supervisor Action to be sent to SPD's Training Unit. OPA's then-Director wrote the Training Unit would, "handle the rest, which I think will include trying to reinterview some of the women that were harassed."

OPA sent a Supervisor Action Notification (SAN) to the Complainant's chain of command. The SAN documented the allegations Recruit #1 made against the Complainant, BLEA's investigation, and the SPD EEO Office's determination that the BLEA investigation was "insufficient." The SAN noted: "They asked OPA to consider investigating this matter." However, the SAN documented that, "OPA believes this incident would be best handled by the training unit as the NE is a police recruit. OPA asks that the training unit report back to OPA about how this matter was resolved."

### **4. OPA Interview – WE#1**

OPA interviewed WE#1. WE#1 explained she works in SPD's EEO Office, which is a subdivision of Human Resources.

WE#1 stated in June 2021, she received a complaint from Recruit #1 alleging the Complainant engaged in sexual harassment of female recruits who were not SPD employees while at BLEA. WE#1 recounted discussions between HR and OPA concerning how to process this investigation. WE#1 stated they then learned BLEA conducted their own investigation with recorded interviews of the Complainant, but also had other non-recorded interviews. WE#1 stated she obtained all of BLEA's investigatory documentation. WE#1 stated OPA and HR determined that an investigation of a recruit at BLEA was most appropriately conducted by the recruits' chain of command, the Training Unit.

WE#1 recalled entering the Complaint in Blue Team, per the instructions of the then-OPA Director. WE#1 noted that the investigation was assigned to the Training Unit Captain, but that Captain requested her assistance conducting the interviews, which she did. WE#1 stated the Complainant's chain of command recommended termination and she later attended the name clearing hearing. WE#1 stated the Complainant told the Chief of Police that he was resigning at his hearing, which ended the Complainant's employment before the Chief could render a decision or consider any of the mitigating information the Complainant presented on his own behalf. OPA corroborated this by reviewing a two-page memorandum signed by the Complainant and dated February 12, 2022. Attached to the memorandum were fourteen pages of supporting documentation. In the third paragraph of the memorandum, the Complainant wrote, "In light of the city's actions towards me, I feel no choice but to resign my employment effective immediately as I am being forced out of my employment with the city."

WE#1 explained that the investigation concerning the Complainant was not an EEO investigation as investigations concerning Police Recruits remain with OPA, which elected to transfer this case to the Training Unit. WE#1 noted that she has multiple roles at the Department, one being an EEO investigator, the other as an employee relations advisor. WE#1 stated she worked on this matter in her HR role, but that the Training Unit requested her assistance as they were concerned their own staff would not be able to conduct a proper interview in this matter.

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### **Analysis and Conclusions:**

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

#### **5.040 - EEO Complaints and Investigations 5.040-PRO-1 EEO Investigations**

The Complainant alleged that NE#1 violated SPD policy by failing to properly notify him about an EEO investigation in which he was named.

SPD Policy defines Equal Employment Opportunity (EEO) complaints consistently with City of Seattle Personnel Rules. See SPD Policy 5.040. City of Seattle Personnel Rule 1.1.2 (Inclusive Workplace Policy) specifies that “The City does not tolerate prohibited behavior against City employees by coworkers, supervisors, managers, officers of the City or by non-employees conducting business with the City.” The SPD Policy Manual contains a procedure for EEO Investigations. See SPD Policy 5.040-PRO-1 EEO Investigations. After SPD management is alerted to an EEO complaint, management is required to consult with SPD Human Resources to mitigate the matter and is directed to document the mitigation efforts in a mitigation memorandum, which is provided to both the EEO complainant and named employee. See *id.* The EEO investigator then intakes the matter, notifies the named employee of the complaint, advises all parties regarding the prohibition on retaliation, and investigates. See *id.* The Chain of Command ultimately adjudicates the matter. See *id.*