



CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 25, 2022

FROM: DIRECTOR GINO BETTS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0100

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	5.002 – Responsibilities of Employees Concerning Alleged Policy Violations 5.002-POL-5. Supervisors Will Investigate or Refer Allegations of Policy Violations	Not Sustained - Inconclusive

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 the Named Employee (NE#1) investigated an alleged serious policy violation, rather than directing it to OPA.

ADMINISTRATIVE NOTE:

Witness Employee (WE#1) allegedly violated SPD Policies 5.001 - Standards and Duties 5.001-POL 2-Employees Must Adhere to Laws, City Policy, and Department Policy and 5.002 - Responsibilities of Employees Concerning Alleged Policy Violations. Specifically, WE#1 allegedly “permitted and endorsed a chain of command investigation into a matter that had already been referred to OPA for investigation.” OPA conducted a separate intake investigation for those allegations.¹ Thereafter, OPA referred it to WE#1’s chain-of-command for Supervisor Action:

Requested Action of the Named Employee’s Supervisor: Please document by completing a *Chain of Command Report*, attaching the report to this case, and sending it to OPA through *Blue Team*.

1. Discuss complaint with Named Employee(s).

Generally, Supervisor Actions involve allegations of minor policy violations or performance issues best addressed through training, communication, or coaching by the employee's supervisor. *OPA Manual 5.4(B)(ii)*. OPA sends a memo mandating the employee’s supervisor take specific, relevant action with the employee. *Id.* The supervisor has 15 days to complete the action and return the case to OPA for review. *Id.*

¹ 2022OPA-0256



SUMMARY OF INVESTIGATION:

On March 24, 2022, WE#1, a lieutenant, emailed OPA to report rumored sexual acts performed at his precinct.²³ The next day, during a call with WE#1, OPA learned NE#1 investigated the rumored misconduct. He also drafted a memo dated March 25, 2022, outlining the investigation. NE#1 sent that memo to WE#1 that day. OPA initiated an investigation. That investigation included reviewing email correspondence between OPA and WE#1 and NE#1's memo. OPA also interviewed NE#1 and WE#1. Evidence summaries are below:

OPA/WE#1 Emails

A. March 24, 2022

WE#1 emailed OPA with subject line, "Misconduct allegation." That day, WE#1's superior told him about:

A rumor going around that a 1st Watch unknown employee, possibly a Sergeant at the South Precinct was observed engaging in oral sex while on duty with a civilian rider. This is alleged to have occurred in the South Precinct CRG room and was witnessed by an unknown employee or employees. It is alleged that the South Precinct custodian is said to have been a witness as well.

WE#1's superior also noted the custodian's first name and limited English. That exchange was WE#1's first time hearing of the allegation. NE#1 was the only sergeant WE#1 knew to "(have) taken a rider since June 2021."

B. March 25, 2022

At 8:29 AM, WE#1 emailed:

Additionally, independent people have approached me on this without to many specifics, however it looks as if this may have been an Officer rather than a Sergeant and that this incident likely occurred prior to 3/13 when (NE#1) had a rider. I will forward more information if and when it becomes available to me.

Following that email, OPA and WE#1 spoke on the phone. During that conversation, OPA learned about NE#1's investigation and memo⁴. Thereafter, at 1:19 PM, OPA emailed WE#1:

Following our discussion, I think at this juncture perhaps do not engage with (NE#1) any further. I have noted that you counselled him already and can include that in the file.

² WE#1 indicated he learned of the rumor from his captain, who directed him to contact OPA.

³ OPA investigated the sexual acts at the precinct allegations (2022OPA-0091).

⁴ WE#1 forwarded NE#1's memo to OPA.



NE#1's Memorandum

NE#1 indicated the rumored act was "circulating around the south precinct for several weeks." About two weeks prior, command staff told NE#1 a custodian reportedly saw a couple engaged in oral sex at the precinct. NE#1 decided to investigate the matter to see whether it had merit, "and (was) something that (needed to be) reported to a supervisor and OPA." NE#1 interviewed the custodian.⁵ The custodian stated, around July 2021, he first saw the couple having suspected oral sex. Specifically, around 4:30 A.M., the custodian entered an unused office. The lights were off. He turned the lights on and saw a male employee sitting in a chair. A female employee quickly stood up, ran, then hid in a nearby cubicle. The custodian had a clear look at the female employee, as he entered the cubicle to empty trash. In early March 2022, the custodian reportedly caught the couple again engaged in oral sex. Then, he entered the precinct's Anti-Crime Team Office and found the male employee sitting in a chair with the female employee on her knees "actively engaged in oral sex." The female employee stood up and left the office and precinct. The custodian was unable to identify the involved employees by name. However, he identified them by department position and seat assignment at identifiable times. He further identified the male employee in-person to the officer translating the interview.

OPA Interviews

A. WE#1

WE#1's OPA interview was consistent with his OPA emails and phone call. Additionally, he mentioned asking NE#1, on March 25, 2022, about the rumored sex acts. NE#1 acknowledged the pervasive rumor but stated "at this point, there's no facts or very limited information and it hadn't involved in an allegation yet and there's no supporting documents to support it. There's several rumors, nefarious rumors, going around the SPD at any given time." WE#1 "instructed (NE#1)...keep your ears out, find out what you can and anything that you find out, let me know." Later that day, NE#1 offered WE#1 a verbal account of what he learned. WE#1 directed NE#1 to draft a memorandum⁶ reflecting his findings. WE#1 was comfortable with NE#1 taking investigative steps "because throughout this process, OPA has reached out to me several times and asked me to conduct additional investigations to see if we can elicit information."⁷

B. NE#1

On June 30, 2022, OPA interviewed NE#1.⁸ On March 25, 2002, WE#1 called NE#1 into WE#1's office. WE#1 asked whether NE#1 "inappropriate contacts with (NE#1's) wife during a ride-along." NE#1 denied it. WE#1 told NE#1 he was named in an OPA complaint for allegedly engaging in sex acts at the precinct. NE#1 indicated those rumors started "several weeks" prior to the ride-along with his wife. NE#1 further declared he would get to the bottom of the matter in "15 minutes." NE#1 got a lead that the station custodian saw the couple engaged in sex acts.

⁵ The custodian primarily spoke Spanish, so NE#1 had a Spanish-fluent officer translate.

⁶ Described above under, "NE#1's Memorandum."

⁷ Following that statement, OPA ended the interview and opened 2022OPA-0256, with WE#1 as a named employee.

⁸ Then, NE#1 was a 21-year Department employee who was promoted to sergeant in 2017.



NE#1, using a Spanish-fluent officer to translate, interviewed the custodian. The custodian two occasions of catching Department employees engaged in sex acts at the precinct. The custodian was unable to identify the involved employees by name. However, he identified them by department position and seating locations at identifiable times. He further identified the male employee in-person to the officer translating the interview. NE#1 reported his findings to WE#1, who directed NE#1 to draft a memo outlining his investigation. NE#1 decided to investigate the rumor out of frustration for being named in the related OPA complaint: "It's like this has nothing to do with me. Why am I getting named? And I don't know who named me in the complaint, but it definitely wasn't me and my wife." WE#1 knew NE#1 intended to investigate the allegation:

I told him I said give me about 15, 20 minutes I will find out what is going on. And he said okay...I told him I was going to go interview the janitor because he was the one apparently at the root of the rumor. He's the one who was spreading the rumor.

Following his investigation, NE#1 typed a memo and sent it to WE#1. NE#1 did not believe, if proven true, the rumored allegation amounted to "a serious policy violation." Ultimately, NE#1 felt his sergeant rank along with WE#1 knowing about it, justified the investigation. Further, NE#1 stated he preferred to investigate the matter, rather than OPA: "My opinion. No, I'm not I'm not a fan of OPA. Well, I mean, so no, I don't think that's I no, I would rather investigate it myself and actually get to the actual facts of it and actually do a thorough investigation."

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

5.002 – Responsibilities of Employees Concerning Alleged Policy Violations 5.002-POL-5. Supervisors Will Investigate or Refer Allegations of Policy Violations

The Complainant alleged the Named Employee (NE#1) investigated an alleged serious policy violation, rather than directing it to OPA.

Supervisors will investigate or refer allegations of policy violations depending on the severity of the violation. *SPD Manual 5.002(5)*. All allegations of serious policy violations will be referred to OPA for investigation. *Id. at (a)*. If the severity of the violation is unclear, the lieutenant or civilian equivalent will consult OPA. The level of seriousness of an alleged policy violation is sometimes contingent upon the specific facts of an incident. The Department recognizes that even some minor violations may raise concerns of public trust and warrant a referral to OPA. Employees should consider the totality of the circumstances when determining the level of seriousness of an alleged policy violation, apply common sense, and consult with an OPA lieutenant or above if uncertain. *Id. at (b)*.

Here, while policy authorizes supervisors to address minor policy violations "as they deem appropriate," there is no indication the rumored sex acts between Department employees at a precinct constituted a minor policy violation. *See Id. at (c)*. While the specific allegation at hand is not listed among the major or minor policy violations outlined in 5.002, policy clearly states "The Department recognizes that even some minor violations may raise concerns of public trust and warrant a referral to OPA."⁹ Regardless of NE#1's level of confidence in OPA's investigative abilities, he was required to defer to OPA.

⁹ Additionally, as NE#1 acknowledged in his OPA interview, the rumored acts, if proven true, would likely violate professionalism standards.



With that said, NE#1 knew WE#1 already forwarded the matter to OPA. NE#1's inclusion in that complaint as a named employee prompted his rogue investigation. However, the evidence suggests WE#1, if not ordered the rogue investigation, at minimum knew NE#1 planned to do it. WE#1 told OPA he was comfortable with it "because throughout this process, OPA has reached out to me several times and asked me to conduct additional investigations to see if we can elicit information." Further, WE#1 admitted instructing NE#1 to "keep your ears out, find out what you can and anything that you find out, let me know." Where employees are instructed to "obey any *lawful* order issued by a superior officer," coupled with NE#1's confusion about the allegation's severity, his actions were narrowly understandable yet clearly inexcusable. (Emphasis added) *See SPD Manual 5.001(15)*. Ideally, WE#1 would have dissuaded NE#1 from taking investigative steps, rather than seemingly encourage him to keep an ear to the ground and document his findings. Similarly, ideally, NE#1 would have told WE#1 NE#1 was unauthorized to investigate an OPA case or sought guidance on the allegation's level of severity. Nevertheless, OPA hesitates to find NE#1 violated 5.002-POL-5 where NE#1 apparently followed a superior officer's direction, and the matter was already referred to OPA.

Accordingly, OPA recommends finding the allegation: Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**