



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 6, 2022

FROM: DIRECTOR GINO BETTS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0173

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 - 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.

ADMINISTRATIVE NOTE:

The Accountability Ordinance and the relevant collective bargaining agreement requires OPA investigations to conclude within 180-days. OPA investigations conclude upon the director's issuance of recommended findings. Here, OPA missed the 180-day timeline by a day. Accordingly, OPA will comply with the relevant process outlined in the Accountability Ordinance. See Seattle Municipal Code 3.29.135(C).

EXECUTIVE SUMMARY:

The Complainant alleged Named Employee #1 (NE#1) violated the law by operating an electronic device while driving.

SUMMARY OF INVESTIGATION:

The Complainant submitted an OPA web complaint, alleging Community Member #1 (CM#1) and a public commenter at the June 1, 2022 Community Police Commission (CPC) meeting noted NE#1 participated in the meeting while driving.

OPA opened this investigation. During its investigation, OPA reviewed the web complaint, CPC meeting videos, a Twitter post by CM#1, and relevant Washington and Oregon laws. OPA also interviewed CM#1 and NE#1. OPA attempted to interview the Complainant, but OPA's phone calls and email were not returned. OPA also attempted to contact the public commenter, but was unable to locate current contact information.

a. Community Police Commission meeting videos

OPA reviewed recordings of two CPC meetings: June 1, 2022, and June 15, 2022, CPC meetings. Neither video depicted NE#1 operating a vehicle.



In the June 1, 2022, video, the camera focused on CPC members who were physically present and did not depict those online. During the June 1, 2022, meeting, NE#1 spoke several times at varying lengths. On three occasions, a CPC moderator noted NE#1 had his “hand raised.”

During the June 1, 2022, CPC meeting, a public commenter responded to a comment made by NE#1, in relevant portion, as follows: “Especially, Sir, you’re driving your car. There’s a potential for harm there. Please do not try to act as if you are...give excuses for people umm killing people ah, because they may be going to rob another bank and you’re not in imminent danger. The public is not in imminent danger.”

At the end of the June 1, 2022, CPC meeting, NE#1 commented, in relevant part: ““Umm, can you hear me now? Umm, I apologize I’m driving to a funeral so umm...I’m glad that I could get in ah...to this meeting because I didn’t think I would be able to. Umm...my name is [NE#1].”

At the very end of the June 15, 2022, CPC meeting, NE#1 stated:

I want to say something real quick. Umm, first of all, I want to apologize to umm, the umm commission for...I...I never want to shed bad light on the commission or the commissioners. Because it’s an open OPA complaint, I don’t want to go into it. But, umm, I just want to...to explain that umm, the week that...the last week that we had a meeting I was heading to a family funeral and I was attempting not to miss our CPC meeting. So, umm, I umm...I did use a hand free device ah, with my cell phone to be involved in the meeting. Umm, I did pull over on the side of the road and sat at a 7/11 for quite a bit of our meeting. So, umm...it just...I just want to say to everyone that I’m going to go to OPA and...and ah, explain myself. Ah, and I just want to be open and honest about it...and...and...and ah, let you know that ah, umm, I going to umm...comply and take care of that situation. Umm, as I understand, ah, first responders are exempt in some ways from using their cell phone or not using their cell...or using their cell phone while driving. But, we’ll find out about that. Umm, so I just wanted to ah, clear the air and...and just tell you that umm...I...I...whether I’m right or wrong in this incident, that I want you guys to know that I’m going to ah, take care of it and umm, that I’m sorry that ah, that happened. Basically. Thank you...for listening.

b. Twitter Post

On June 1, 2022, CM#1 posted the following comment to Twitter: “Onto public comment. [Public commenter] is first. She says that the excusing of harm re: [NE#1]’s comments about “potential for harm” are disturbing esp. because ‘you, sir, are driving your car’ while speaking on video in the meeting. [NE#1] is indeed driving while on video.”



c. OPA Interview – Community Member #1

OPA interviewed CM#1 on June 6, 2022. CM#1 was present at the June 1, 2022, CPC meeting. CM#1 observed NE#1 driving a vehicle while NE#1 participated in a CPC meeting. CM#1 stated they were certain NE#1 was driving and saw NE#1's hands moving. CM#1 stated NE#1 occasionally looked at the screen. CM#1 believed NE#1's phone was mounted in the car and not in NE#1's hand. CM#1 did not recognize the potential violation until the public commenter's statement. CM#1 did not believe NE#1 was on duty, as NE#1 stated he was on the way to a funeral.

d. OPA Interview – Named Employee #1

OPA interviewed NE#1 on August 16, 2022.

NE#1 was CPC's Seattle Police Officers' Guild (SPOG) representative. NE#1 stated he sought that appointment to bring "light to what police officers on the street do" and perspective on CPC proposals.

NE#1 stated, on June 1, 2022, he was driving to a funeral in Oregon. NE#1 said he drove his personal vehicle. NE#1 stated he does not like to miss CPC meetings: "It's my responsibility to be there." NE#1 stated the meeting started at 9:00AM. NE#1 recalled, at that time, he was "almost into Oregon." NE#1 said he had a "Bluetooth . . . hands-free device." NE#1 stated, when the meeting started, he opened his Zoom application and listened in. NE#1 stated he was "looking at the road. I'm not looking at my phone." NE#1 said, "other than the roll call in the beginning I didn't have to speak."

NE#1 said, as he neared his destination in Oregon, he pulled off the road at a convenience store. NE#1 said, "that's when I turned on my video so that they could see that I was there." NE#1 reiterated, "when I was traveling on the road, Bluetooth, hands free, hands on the steering wheel, looking straight ahead. Answered one question when they asked if I was there. And then, ah, went to [municipality in Oregon] and pulled over at a 7/11 which is not far from the funeral home."

NE#1 admitted his phone may have been in his hands "a few times. But not to talk or look. To adjust maybe or something like that."

OPA asked NE#1 about the statements he made in the June 1, 2022, CPC meeting video. NE#1 stated he was at the convenience store in Oregon except for his first introductory statement. OPA asked NE#1 if the Zoom video was activated while he drove. NE#1 responded, "I was looking straight ahead. I don't remem . . . recall whether it was or not, but I was not looking at it. I was looking straight ahead."



ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

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

The Complainant alleged, while driving, NE#1 used his cell phone to participate in a virtual Community Police Commission (CPC) meeting.

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

Washington and Oregon have similar laws related to operating cell phones while driving. Washington RCW 46.61.672 prohibits the use of a personal electronic device while driving a motor vehicle on a public highway. That law permits cell phone use when a vehicle “has pulled over to the side of, or off of, an active roadway and has stopped in a location where it can safely remain stationary.” RCW 46.61.672(5)(a). That law defines “use” as: (1) holding the personal electronic device in the driver’s hands; (2) using the device with hands or fingers except “the minimal use of a finger to activate, deactivate, or initiate a function of the device;” and (3) “watching video on a person electronic device.” *Id.* at (5)(c). Similarly, Oregon ORS 811.507 prohibits driving while “hold[ing] a mobile electronic device” or “us[ing] a mobile electronic device for any purpose.” The Oregon law provides affirmative defenses to the offense if, among other things, the person was “18 years of age or older and was using a hands-free accessory” or a police officer acting within the scope of their employment.

Here, there is insufficient evidence to conclude NE#1 violated Washington or Oregon laws during the June 1, 2022, CPC meeting. During his OPA interview, NE#1 described generally lawful conduct—using a hands-free device while driving and speaking while parked outside a convenience store. Conversely, the public commenter and CM#1 described NE#1 as “driving while on video,” occasionally looking at the video, and moving his hands with his cell phone apparently mounted in his car. However, even if OPA accepted those allegations as true, where those acts occurred, and which law applies is undetermined. If it happened in Oregon, NE#1 arguably acted within the law.

However, if NE#1 did so in Washington, he technically committed a traffic infraction by looking at his phone screen while driving. Traffic infractions are generally minor policy violations. See SPD Policy 5.002-POL-5(c) (example of minor policy violations includes “[t]raffic and parking infractions”). No statutory exception would apply because NE#1 was off-duty and in his personal vehicle. OPA agrees, the prudent approach would have been for NE#1 to tell meeting participants he was either using a hands-free device or parked, to avoid the appearance of impropriety.

However, where the possible minor policy violation does not amount to willful misconduct, OPA recommends this allegation be Not Sustained – Training Referral.

- **Training Referral:** NE#1’s chain of command should discuss OPA’s findings with NE#1, review Washington RCW 46.61.672 with NE#1, and provide any retraining and counseling deemed appropriate. Any retraining and/or counseling should be documented and maintained in Blue Team.

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