



CLOSED CASE SUMMARY

ISSUED DATE: DECEMBER 29, 2022

FROM: DIRECTOR GINO BETTS
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2022OPA-0212

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	12.050 - Criminal Justice Information Systems 2. Inquiries Through ACCESS, or Any Other Criminal Justice Record System, Are Only to Be Made for Legitimate Law Enforcement Purposes	Not Sustained - Inconclusive
# 2	12.050 - Criminal Justice Information Systems 6. All Employees Shall Adhere to WASIS and NCIC Policies	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:

OPA alleged Named Employee #1 (NE#1) searched multiple people in the Criminal Justice Information Systems, including the NCIC database, without a legitimate law enforcement purpose. Those alleged searches occurred 2019 through 2021.

ADMINISTRATIVE NOTE:

On July 13, 2022, NE#1 separated from the Department. Accordingly, administrative discipline cannot be imposed against NE#1.

SUMMARY OF INVESTIGATION:

During a separate OPA investigation (2020OPA-0652), OPA reviewed a financial analysis the FBI conducted on NE#1. That financial analysis listed names that matched names NE#1 ran in the NCIC database. OPA opened this separate investigation.

During this investigation, OPA reviewed the OPA complaint, NE#1's NCIC searches, the FBI financial analysis for NE#1, Body Worn Video (BWV), and email correspondence. OPA attempted to interview NE#1. However, this case was opened two days prior to NE#1's separation from the Department. Accordingly, OPA could not compel NE#1 for an interview. Although NE#1 ignored OPA's requests for a voluntary interview, NE#1 voluntarily answered some questions by email.



a. Records Review

OPA reviewed names NE#1 searched in the NCIC system over a three-and-a-half-year period. OPA also reviewed the FBI's financial analysis of NE#1. Community Members #1-#3's (CM#1-CM#3) names appeared in both records. Variations of Community Member #4's (CM#4) name appeared in both records.

OPA also reviewed names NE#1 ran during two five-month periods: February through June 2019 and August through December 2021. From February through June 2019, NE#1 ran approximately two hundred names. OPA audited every tenth name and, out of the twenty names reviewed, determined seventeen were searched for law enforcement purposes. The other three names had records in SPD systems, but it was not immediately clear why NE#1 ran those three names. None of those three people matched names associated with 2020OPA-0652. From August through December 2021, NE#1 ran approximately one hundred names. OPA reviewed every tenth name and, out of the ten names reviewed, determined they were all searched for law enforcement purposes.

b. Community Member Details

OPA learned the following about NE#1's questioned searches:

NE#1 ran CM#1 on March 13, 2019, at 8:19 A.M. The FBI financial analysis showed NE#1 made a payment of \$1,250 to CM#1 on May 2, 2019. During 2020OPA-0652's investigation, it was determined CM#1 and NE#1 had a dating relationship.¹

NE#1 ran CM#2 on April 28, 2019, at 7:29 A.M. and again at 8:10 A.M. The FBI financial analysis showed NE#1 paid CM#2 \$150 on June 16, 2019. NE#1 was logged to a call when he ran CM#2's name, but no documentation or BWV suggested CM#2 was associated with any call NE#1 serviced April 28, 2019.

NE#1 ran CM#3 on October 26, 2021, at 7:39 A.M. and again on October 27, 2021, at 8:45 A.M. The FBI financial analysis showed NE#1 paid an individual with a name like CM#3's \$500 on September 10, 2020. NE#1 was logged to a crisis call when he first ran CM#3's name and was logged to in-service training the second time. OPA did not find a nexus between CM#3 and that crisis call.

NE#1 ran CM#4 on December 2, 2021, at 10:32 A.M. The FBI financial analysis showed NE#1 made two payments to a person with a variation of CM#4's name (one letter was different.) NE#1 paid that individual \$100 on March 1, 2019, and \$1,500 on March 11, 2019. Just before NE#1 ran CM#4's name, NE#1 cleared a call. OPA did not find a connection between CM#4 and that call, or any call NE#1 serviced December 2, 2021.

¹ That determination was based on a police report detailing CM#1's DUI arrest while driving NE#1's personal vehicle. CM#1 and NE#1 also had a common listed address.



c. Email Correspondence with Named Employee #1

OPA emailed NE#1 for a voluntary interview. NE#1 responded he would answer OPA's questions in written form. NE#1 also characterized OPA's investigation as "frivolous." NE#1 indicated he ran the four Community Members' names in connection with "ride along applications." NE#1 also denied using "any law enforcement databases for anything other than law enforcement purposes."

Later, NE#1 emailed the following statement to OPA:

[CM#4] & [CM#1] went on ride alongs, however, [CM#3] missed the ride along once and the second time up his application attempt it was advise by my Sergeant that he did not believe ride alongs were approved due to Covid. [CM#2] is an Army veteran that wanted a ride along, however, later advised he was unable to make it.

OPA responded with a request for clarification. Specifically, OPA requested further details to confirm the ride along applications. NE#1 responded:

[CM#4] was on a call with me at 12 Av/ E Madison St where a construction worker fell and passed away. [Witness Supervisor #1] was the sergeant at the time on scene and aware of the ride along. I don't remember the other ones. I was just handed the ride along form/paperwork a few days before each rider and told they were signed off by chain of command for the ride alongs. I'm not sure what else to say. I know at least two rode and the other two reached out advising they were unable to make it and reached out when they wanted to submit another ride along application. WACIC/NCIC was tan each time a form was filled out. As stated before, I attempted to hand the ride along form to [Witness Supervisor #2] who stated he was unsure of the ride along policy and if it was lifted due to Covid. That form was not turned in due to that. I do not recall anything else and have no other information other than they were ride alongs/applicants.

NE#1 did not respond to further emails.

d. Email Correspondence with Precinct Administrative Staff

OPA emailed with an administrator (Administrator) at NE#1's former precinct. The Administrator confirmed CM#4 participated in a ride along with NE#1 in 2017. The Administrator was unable to find ride along documentation for the other three Community Members.

OPA asked whether the precinct maintained a complete record of ride along paperwork. The Administrator responded that they spoke with the precinct's long-serving clerk (Clerk) to confirm details and responded as follows:



I think that there are too many hands that touch those forms, or ways that a name could be submitted for a ride along to give this credibility. Hypothetically, if someone wants to do a ride along, they would fill out the form which is online now I'm told as well, and then submit it. Then a clerk or someone clerking that day would give it to a Sgt, who then asks an Officer to run it possibly, then it goes to an Lt. Then back to an Officer when assigned to do the ride along, then back to the clerk if there is one working to be stored if they know where to put it. I was also told that the retention is only 1 year. So, we have them from 2015 forward in our archive, but there was a binder that I hadn't seen and that was getting purged yearly.

I apologize, I thought that I had all the information. It appears that our records are inconsistent as some may have been purged. However, [the Clerk] doesn't recall receiving any in the last 3 years.

e. Prior Ride Along Documentation & BWV

OPA reviewed CM#4's 2017 ride along application. That document identified NE#1 as the assigned officer. OPA also located BWV from three days after the 2017 Ride Along Form was signed that appeared to confirm NE#1 hosted a ride along that day.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

12.050 - Criminal Justice Information Systems 2. Inquiries Through ACCESS, or Any Other Criminal Justice Record System, Are Only to Be Made for Legitimate Law Enforcement Purposes

It was alleged NE#1 accessed criminal justice record systems without a legitimate law enforcement purpose.

SPD Policy 12.050-POL-2 forbids SPD employees from accessing any criminal justice record system except for "legitimate law enforcement purposes." SPD Policy 12.050-POL-2. That policy specifies that inquiries made for "personal use, or inappropriate use or dissemination of the information" can result in penalties. *Id.*

Here, SPD Policy 16.030 – Ride Along Program requires NCIC III searches for ride along applicants. It further states those searches constitute a legitimate law enforcement purpose. SPD Policy 16.030-POL-6. Although, as a procedural matter, policy specifies that the "assigned sergeant" is supposed to conduct those checks, the Administrator suggested that—in practice—this step is sometimes delegated to the officer. Moreover, even if such a delegation violated the ride along policy, the officer's purpose of conducting the search would still constitute a legitimate law enforcement purpose.

It is certainly noteworthy that NE#1 conducted criminal justice system record checks on Community Members with whom he appeared to have financial dealings. However, OPA cannot conclude NE#1 violated SPD policy with respect to those searches because there is insufficient evidence to overcome NE#1's plausible explanation. NE#1 denied the allegations, stating he ran the four Community Members in connection with ride along applications. OPA confirmed one of the Community Members, CM#4, did participate in a prior ride along with NE#1, albeit in 2017. Moreover, as described by the Administrator, NE#1's former precinct's record keeping for ride along applications was unreliable.



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

Recommended Finding: **Not Sustained - Inconclusive**

Named Employee #1 - Allegation #2

12.050 - Criminal Justice Information Systems 6. All Employees Shall Adhere to WASIS and NCIC Policies

It is alleged NE#1 failed to adhere to WASIS and NCIC Policies.

SPD Policy 12.050-POL-6 specifies Washington State Identification System (WASIS) and NCIC Interstate Identification Index (NCIC III) use is regulated by the FBI and Washington State Patrol pursuant to federal and state law. SPD Policy 12.050-POL-6. SPD policy outlines several regulations governing the use of those systems including, but not limited to, the restriction on accessing Criminal Justice Information System (CJIS) information except in the context of an “official investigation when conducted while working for a criminal justice organization.” *Id.*

For the reasons set forth above at Named Employee #1, Allegation #1, OPA recommends this allegation be Not Sustained – Inconclusive.

Recommended Finding: **Not Sustained - Inconclusive**