
Issued Date: FEBRUARY 2, 2024

From: Director Gino Betts, Office of Police Accountability 

Case Number: 2022OPA-0278

Allegations of Misconduct & Director's Findings

Named Employee #1

1. **Allegation #1:** 5.001 - Standards and Duties POL-2. Employees Must Adhere to Laws, City Policy, and Department Policy
 - a. **Finding:** Not Sustained - Unfounded

2. **Allegation #2:** 5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional
 - a. **Finding:** Not Sustained - Unfounded

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 Named Employee #1 (NE#1) tried to hit her with a car.

Administrative Note:

On January 3, 2024, the Office of Inspector General certified OPA's investigation as thorough, timely, and objective.

Summary of the Investigation:

On August 30th and 31st, 2022, OPA was notified that an outside law enforcement agency was investigating NE#1 for allegedly attempting to run over his ex-wife with his personal vehicle while off duty. OPA was also notified that NE#1 reported the incident to his chain of command. About a week later, NE#1's ex-wife (the Complainant) filed an OPA complaint concerning the incident. OPA opened an investigation, which was tolled during the criminal investigation and prosecution. OPA's administrative investigation resumed after the criminal case was dismissed on August 17, 2023. During its investigation, OPA reviewed the complaint, police investigation, and protection

order materials. OPA also interviewed NE#1. OPA attempted to contact the Complainant, but she did not respond.

1. Complaint

The Complainant made several allegations, including, “I believe [NE#1] attempted to run me over with his vehicle.” The Complainant wrote that an outside law enforcement agency was investigating the incident, and “[two] other key witnesses provided statements.” Among the Complainant’s allegations was that NE#1 assaulted their minor child. That investigation is pending under 2022OPA- 0282.

2. Police Investigation

The local police department’s (LPD) report indicated:

On August 29, 2022, around 5:00 PM, the Complainant went to City Hall to make a report with LPD. The Complainant said NE#1 tried to hit her with a car outside their child’s middle school that morning. The Complainant said their eleven and fifteen—year—old sons were in the car with NE#1 during the incident. The Complainant said she and NE#1 have a court-ordered parenting plan. The fifteen-year-old child (Child #1) was with the Complainant. The LPD officer took the Complainant and Child #1’s statements separately.

The Complainant reported that their children were with NE#1 as it was the eleven-year-old child’s (Child #2) orientation. The Complainant also completed two written statements, which were consistent with her oral statements to the LPD officer. The Complainant stated they planned to meet at the orientation. The Complainant stated that as she approached the school, NE#1’s car appeared to be leaving. The Complainant stated she stopped in the crosswalk and waved at NE#1’s vehicle. The Complainant stated that she and NE#1 made eye contact, and NE#1 appeared to mouth something. The Complainant thought NE#1 would drive over to her to talk. Instead, the Complainant alleged the car sped towards her, causing her to jump out of the way. The Complainant stated NE#1 drove so fast that she barely had time to get out of the way, and he almost ran over her feet. The Complainant stated NE#1’s car had a dashcam that likely captured the incident.

Child #1 reported that he, NE#1, and Child #2 were at Child #2’s orientation. Child #1 also completed a written statement, which was consistent with his oral statement to the LPD officer. Child #1 stated NE#1 realized they forgot Child #2’s school picture clothes, so they were heading home to retrieve them. Child #1 said that, as they were leaving, the Complainant was about forty feet ahead, waving and smiling at them in the road. Child #1 stated NE#1 accelerated towards the Complainant. Child #1 stated NE#1 accelerated so fast that the car jolted, and then NE#1 “slammed on the brakes.” Child #1 noted the car stopped about two feet from the Complainant, and NE#1 screamed, “What!” and threw his arms up. Child #1 described the Complainant as scared and startled. Child #1 stated the Complainant asked, “What was that for?” and NE#1

responded, "I am not going to tolerate someone standing in front of my car." Child #1 stated the Complainant jumped out of the way as NE#1 sped off.

The LPD officer contacted the middle school's resource officer and reviewed security footage. The footage did not capture the incident due to trees and sunlight obscuring the view. The LPD officer wrote that the footage showed NE#1 and the two children entering the lot and walking inside the school about two minutes later. The footage depicted NE#1 and the children leaving about 35 minutes later.

The LPD report noted the Complainant called back later that day. The Complainant reported that Child #2 had a conversation with NE#1 that made Child #2 uncomfortable. The Complainant summarized Child #2's statement to the LPD officer. The LPD officer asked to speak with Child #2. Child #2 provided a statement the next day. Child #2 stated he was with NE#1 and Child #1 at the school orientation. Child #2 said they were leaving to get new clothes for him when they saw the Complainant on the road. Child #2 stated the Complainant was waving at them when NE#1 "drove fast towards his mom and stopped close to her." Child #2 said he was terrified, and NE#1 yelled about not tolerating people stopping in front of his car. Child #2 stated NE#1 drove off, almost hitting the Complainant. Child #2 reported asking NE#1 why he tried to run over the Complainant, and NE#1 responded, "I could have killed her, but I didn't." Child #2 stated he told NE#1 that he should not say things like that, and NE#1 replied, "You're right. I shouldn't, but it's true." Child #2 stated he was afraid of NE#1.

The LPD officer called NE#1, who came to the police department to provide a statement. NE#1 stated he was at Child #2's orientation but needed to get school picture clothes. NE#1 stated they returned to the car and started to drive away when he saw the Complainant walking through the parking lot. NE#1 said the Complainant waved her arms and yelled. NE#1 explained there was a history of domestic violence with the Complainant being violent towards him and that the Complainant had taken Child #2 from school in the past, in violation of the parenting plan. NE#1 stated he drove away to avoid a confrontation. NE#1 said, as he drove, the Complainant "jumped out in front of his car, threw her hands up and started yelling, 'stop, give me the kids!'" NE#1 stated he stopped and tried finding another way to leave. NE#1 said the Complainant walked toward the side of his car and tried to open the doors. NE#1 said since the Complainant was no longer in front of his car, he drove away. NE#1 said his dash cam did not record the incident but offered to provide the car's memory card. NE#1 later provided the car's memory card, but there were no recordings of the incident or from that date and time.

The prosecutor charged NE#1 with domestic violence and reckless endangerment. The prosecution moved to dismiss the criminal case on August 17, 2023. RCW 9A.36.050 ("A person is guilty of reckless endangerment when he or she recklessly engages in conduct not amounting to drive-by shooting but that creates a substantial risk of death or serious physical injury to another person... Reckless endangerment is a gross misdemeanor."). The prosecutor informed OPA that a traffic infraction would be filed against NE#1 for Negligent Driving in the Second Degree. See RCW 46.61.525 ("A person is guilty of negligent driving in the second degree if . . .

he or she operates a motor vehicle in a manner that is both negligent and endangers or is likely to endanger any person or property.”)

3. Protection Order Materials

The Complainant and NE#1 petitioned for domestic violence protection orders against one another after the August 29, 2022, incident. A Snohomish County Superior Court judge held a hearing on the matter. On February 3, 2023, the Court denied the Complainant’s petition for a protection order and granted NE#1’s petition. The Court found the Complainant’s response to NE#1’s allegations not credible. Concerning the August 29, 2022, incident, the Court found “the testimony of [NE#1] to be credible as to what happened at the child’s school and later when [the Complainant] came to the home of [NE#1] uninvited and refused to leave which prompted law enforcement having to come to intervene.”

The Court also noted: “There is no doubt that what happened on August 29, 2022, was likely scary for the children, as the history between [the Complainant] and [NE#1] has prompted intervention from law enforcement, but this court cannot find that the children’s fear that day was caused by [NE#1].”

4. OPA Interview – Named Employee #1

OPA interviewed NE#1 on December 5, 2023. NE#1’s account was consistent with his statement to the LPD officer.

Additionally, NE#1 explained that the Complainant had previously assaulted him and taken Child #2 in violation of their parenting plan and believed that was likely her intention on August 22, 2022. NE#1 stated that their children were on their cell phones before the incident, and he did not believe they saw the entire sequence. NE#1 stated that, after the Complainant walked toward the side of his car, he looked at the side mirror to ensure the Complainant was not in danger when he pulled off. NE#1 stated he drove away to de-escalate the situation.

NE#1 noted that the Complainant’s written statement to the LPD officer claimed “tons of adults & children around” during the incident, but none called 9-1-1. NE#1 also noted inconsistencies between the Complainant’s and Child #1’s accounts. NE#1 also stated he drove a Tesla with collision sensors and a camera system, which would have been activated if the Complainant’s allegations were true. NE#1 stated neither the sensor nor the camera system was activated. NE#1 noted the Complainant changed her story at their court hearing, admitting that NE#1 may not have tried to hit her with the car.

Analysis and Conclusions:

Named Employee #1 - Allegation #1

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

The Complainant alleged NE#1 violated the law by trying to hit her with his car.

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

While there is evidence supporting both sides, at least a preponderance of the evidence suggests the allegation did not occur as the Complainant alleged.

First, as noted by NE#1, the Complainant and Child #1's accounts were inconsistent. The Complainant said she "jumped out of the way" as NE#1 sped toward her, "almost running over my feet." Child #1 stated NE#1 accelerated towards the Complainant from forty feet away before slamming on the brakes, stopping two feet from the Complainant.

Second, as NE#1 noted, no onlooker called 911. Moreover, the Complainant did not report the incident until about eight hours later.

Third, while not conclusive, the LPD officer's video review was inconsistent with the Complainant's account. OPA also notes that NE#1's Tesla did not record the incident—evidence the Complainant told the police should exist.

Fourth, OPA notes the Snohomish County judge's credibility findings. The judge heard the Complainant and NE#1's sworn testimony and only found NE#1 credible. OPA only interviewed NE#1 since the Complainant did not respond to communications.

Overall, OPA finds this allegation did not occur as alleged. Accordingly, OPA recommends it be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #2

5.001 - Standards and Duties POL-10. Employees Will Strive to be Professional

The Complainant alleged NE#1 was unprofessional when he tried to hit her with his car.

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.

Additionally, the policy instructs Department employees to “avoid unnecessary escalation of events even if those events do not end in reportable uses of force.” *Id.*

For the reasons at Allegation #1, OPA recommends this allegation be Not Sustained – Unfounded. Additionally, even if NE#1 drove negligently, the preponderance of the evidence suggests he did so to escape the Complainant, who a court ruled had assaulted and stalked NE#1. OPA cannot find that NE#1’s reaction constituted unprofessionalism under these circumstances.

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

Recommended Finding: **Not Sustained - Unfounded**